No. 17-40884

In the United States Court of Appeals for the Fifth Circuit

MARC VEASEY; JANE HAMILTON; SERGIO DELEON; FLOYD CARRIER; ANNA BURNS; MICHAEL MONTEZ; PENNY POPE; OSCAR ORTIZ; KOBY OZIAS; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; JOHN MELLOR-CRUMMEY; KEN GANDY; GORDON BENJAMIN; EVELYN BRICKNER, Plaintiffs-Appellees,

TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS, Intervenor Plaintiffs-Appellees,

v.

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; ROLANDO B. PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STATE OF TEXAS; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants-Appellants.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND; IMANI CLARK, Intervenor Plaintiffs-Appellees,

v.

STATE OF TEXAS; ROLANDO B. PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants-Appellants.

TEXAS STATE CONFERENCE OF NAACP BRANCHES; MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, Plaintiffs-Appellees,

v.

ROLANDO B. PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants-Appellants.

LENARD TAYLOR; EULALIO MENDEZ, JR.; LIONEL ESTRADA; ESTELA GARCIA ESPINOZA; MARGARITO MARTINEZ LARA; MAXIMINA MARTINEZ LARA; LA UNION DEL PUEBLO ENTERO, INCORPORATED, Plaintiffs-Appellees,

v.

STATE OF TEXAS; ROLANDO B. PABLOS, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants-Appellants.

On Appeal from the U.S. District Court for the Southern District of Texas, Corpus Christi Division, Nos. 2:13-cv-193, 2:13-cv-263, 2:13-cv-291, and 2:13-cv-348

APPELLANTS' EMERGENCY MOTION TO STAY PENDING APPEAL DISTRICT COURT ORDER GRANTING PERMANENT INJUNCTION

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INTRODUCTION

Last year, this Court held that a Texas photo-voter-ID law—Senate Bill 14 (SB14)—had a discriminatory "effect on those voters who do not have SB 14 ID or are unable to reasonably obtain such identification." *Veasey v. Abbott*, 830 F.3d 216, 271 (5th Cir. 2016) (en banc). Within days, the parties followed the Court's suggestion and made a reasonable-impediment exception the centerpiece of an agreed interim remedy for the November 2016 election. *See* Exh. 3. The Texas Legislature then enacted Senate Bill 5 (SB5). Exh. 4. Like the interim remedy, SB5 allows voters without photo ID to cast a regular ballot after affirming that they face a reasonable impediment to obtaining the necessary identification.

But rather than give the Legislature the first opportunity to fix any possible discriminatory effects by enacting SB5—and despite notice of this pending legislation—the district court on April 10, 2017, issued a cursory 10-page opinion, Exh. 2, determining that SB14 was enacted with a discriminatory purpose. Rather than "determine anew" the question of intentional discrimination, 830 F.3d at 272, the district court essentially readopted its vacated opinion without once citing the record or addressing virtually any of the arguments in defendants' 334 pages of briefing on remand. *See* Exhs. 9-11. And the district court refused to reconsider its discriminatory-purpose finding after SB5 was enacted. Exhs. 1, 5.

The State acted precisely as this Court suggested when it passed SB5. *See* 830 F.3d at 270 ("[A]ppropriate amendments might include a reasonable impediment or indigency exception . . . ."). Nevertheless, the district court's August 23, 2017 order

has now permanently enjoined the State from using *any type* of photo-voter-ID requirement. Exh. 1 at 27. And remarkably, the district court is about to commence a "VRA §3(c)" preclearance bail-in hearing. *Id.*

Compounding its errors, the court relied on its cursory discriminatory-purpose ruling to shift the burden and require the State to prove that its SB5 ameliorative legislation went far enough—which contradicts this Court's precedent. *Miss. State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 407 (5th Cir. 1991) (rejecting argument that ameliorative legislation did not go far enough to eliminate discriminatory effect because *plaintiffs* "failed to offer objective proof that the new procedures would have inadequate effect").

Worse yet, the State *did* prove that SB5 fully remedied the discriminatory effect found by this Court. The State provided the district court with record citations showing that the seven reasonable impediments enumerated in SB5 alleviate *every single burden* alleged by the 14 named plaintiffs and their 13 testifying witnesses. *See* Exh. 6. The district court's order did not even acknowledge this evidence or the State's argument.

Instead, the district court engaged in a "purely speculative" analysis, *Operation Push*, 932 F.2d at 407, to conclude that SB5's exclusion of an "other" reasonable-impediment category—allowing a person to cast a regular ballot by writing *anything* in a blank space—perpetuated discriminatory effect. But even the district court acknowledged what the Legislature knew: this "other" box had been abused in the November 2016 election. Exh. 1 at 18 n.15. There is nothing in the record support-

ing a finding that the "other" option was needed to remedy any discriminatory effect. The district court's speculation is based solely on outside-the-record evidence (12 reasonable-impediment declarations used under the interim remedy in the November 2016 election). And none of these declarations establishes that any of these voters either could not use one of SB5's seven enumerated reasonable-impediment exceptions or that they actually faced a reasonable impediment. *See infra* pp. 4-5.

The Court should immediately stay the district court's extraordinary injunction pending appeal. The United States consents to a stay. Defendants have agreed to use the interim remedy's reasonable-impediment exception for 2017 elections, after which SB5's reasonable-impediment exception takes effect for 2018 and beyond. Exhs. 7, 8. Defendants respectfully request a ruling by September 7, 2017, based on deadlines faced by the Secretary of State regarding voter-registration-certificate issuance.[1] Exh. 13.

ARGUMENT

The stay factors are satisfied here: (1) defendants' likely success on the merits, (2) defendants' irreparable harm, (3) no substantial harm to other parties, and (4) the public interest. *See Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013).

I. IMMINENT ELECTION DEADLINES WARRANT A STAY.

The district court enjoined SB14 and SB5 just seven calendar days before the Secretary of State's August 30, 2017 internal deadline to finalize language on voter-registration certificates, including voter-identification requirements, so that county

[1] Defendants moved for a stay in district court; that motion is pending.

registrars can issue the certificates by statutory deadlines. *See* Exh. 13. This deadline was set because these certificates face a printer deadline of September 18. The Secretary of State's office can work as fast as possible and still meet this September 18 printer deadline if a stay is entered by September 14. *Id.* Accordingly, so the Supreme Court has time to review any stay request lodged there, defendants request that this Court rule by September 7.

The State is irreparably injured if its election procedures and deadlines are undone by a district-court injunction without adequate time for appellate review. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006) (per curiam). That is true here. As in *Purcell*, the State cannot secure effective appellate review unless the injunction is stayed. Indeed, under this injunction, the State cannot issue free voter IDs (election identification certificates, or "EICs").

II. Defendants Are Likely to Succeed on the Merits.

A. SB5's Reasonable-Impediment Exception Remedies All of Plaintiffs' Claims.

SB5 eliminates any potential harm threatened by the State's photo-ID requirement. SB5 creates a reasonable-impediment exception that *wholly waives* SB14's photo-ID requirement, allowing voters to cast regular ballots by showing proof of name and address and executing a declaration that they face a reasonable impediment to obtaining qualifying photo-ID. Exh. 4. That declaration lists the seven reasonable impediments included in the agreed interim remedy. *See id*; cf. Exh. 3 at 6. Those categories cover *every burden* alleged by the 14 named plaintiffs and their 13 testifying witnesses. *See* Exh. 6.

SB5's reasonable-impediment exception thus cures any "discriminatory effect on those voters who do not have SB 14 ID or are unable to reasonably obtain such identification." *Veasey*, 830 F.3d at 271.[2] If there were any doubt, South Carolina's similar photo-ID law gained VRA § 5 preclearance. *South Carolina v. United States*, 898 F. Supp. 2d 30, 35-43 (D.D.C. 2012). Unlike South Carolina's and North Carolina's reasonable-impediment exceptions, SB5 enables voters to cast *regular* ballots—not provisional ballots—thus eliminating any possible "lingering burden" caused by inconsistent decisions by provisional-ballot boards about what impediments are "reasonable." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016); *see id.* at 243 (Motz, J., dissenting). And SB5 makes Texas's voter-ID law more accommodating than the law upheld in *Crawford v. Marion County Election Board*—because Indiana required a second trip to the circuit-court clerk's office to execute an indigency affidavit. 553 U.S. 181, 186 (2008) (plurality op.).

SB5's reasonable-impediment exception forecloses injunctive relief by completely remedying plaintiffs' alleged harm. *See Veasey*, 830 F.3d at 264. A discriminatory-purpose violation requires "effects as well as motive," meaning that an ongoing purpose violation cannot be found without ongoing discriminatory results. *Cotton v. Fordice*, 157 F.3d 388, 391-92 & n.9 (5th Cir. 1998); *accord, e.g.*, *Palmer v. Thompson*, 403 U.S. 217, 224, 225 (1971).

[2] Defendants preserve the argument that SB14 has no prohibited discriminatory effect but recognize that this Court held otherwise, 830 F.3d at 243-65.

The record does not contain a shred of evidence to the contrary. The district court maintained that "the record holds no evidence regarding the impact of the interim Declaration of Reasonable Impediment (DRI), either in theory or as applied." Exh. 2 at 10. On that reasoning, injunctive relief should have been denied. But the district court contradicted circuit precedent by shifting the burden of proof to the State. *See supra* p. 2.

Regardless, the evidence in the record proves that SB5 completely removed any discriminatory effect from SB14 on *every* voter that plaintiffs identified. The seven enumerated reasonable impediments in both the interim remedy and SB5's reasonable-impediment exception cover the burdens alleged by these 27 individuals—the individuals whose testimony plaintiffs used to support their discriminatory-effect claim in the first place. Exh. 6. That forecloses injunctive relief no matter who bears the burden.

The district court's finding of a continuing discriminatory effect under SB5 depends on inadmissible, non-probative evidence. In determining that SB5's elimination of an "other" box in the reasonable-impediment declaration is harmful, the court relied on inadmissible hearsay: 12 reasonable-impediment declarations submitted by various voters in the November 2016 election. Exh. 1 at 17 & n.14. Defendants, in contrast, properly relied on separate reasonable-impediment declarations (Exh. 12) showing abuses of the "other" box to confirm the Legislature's legitimate ameliorative *purpose* in eliminating it. *E.g.*, Exh. 12 at 20 ("have procrastinated"). But by citing declarations to attack SB5 as a proper remedy, the district court improperly accepted them for the truth of the matters asserted therein. *See* Fed. R.

Evid. 801-02; D.E. 1063 at 2-4 (Defendants' objection). Defendants had no opportunity to cross-examine any of these voters—to confirm, for instance, that their impediment was already covered by SB5 or was not reasonable.

In any event, each of the "other" reasons given in these 12 declarations would *already qualify* under one of SB5's seven enumerated reasonable-impediment exceptions—or they were *not reasonable* impediments at all. Three statements expressly correspond to one of the seven enumerated impediments.[3] Three other statements invoke financial hardship to obtaining an ID or free EIC,[4] which are covered by the enumerated impediments of "Lack of transportation," "Lack of birth certificate or other documents needed to obtain acceptable photo ID," "Work schedule," or "Family responsibilities." Another three statements say the voter just moved to Texas without specifying any *impediment* to getting ID (and the enumerated impediments include several reasons that might apply to a new state resident, such as "Photo ID applied for but not received," "Family responsibilities," or "Lack of transportation").[5] One "other" statement said "99 years old no ID," D.E. 1062-1 at 5—which does not directly assert an impediment, but could well implicate "Lack

[3] "[A]ttempted to get Texas EIC but they wanted a long-form birth certificate." D.E. 1061-1 at 9 (covered by "Lack of birth certificate" enumerated impediment, which the person appears to have also checked). "[M]other passed away & I cannot locate my SS card & other personal info that she possessed." D.E. 1062-1 at 3 (covered by "Lack of birth certificate or other documents needed to obtain acceptable photo ID" enumerated impediment). And "daughter doesn't want him driving at age 85." *Id.* at 4 (covered by "Lack of transportation" enumerated impediment).

[4] "Financial hardship," "Unable to afford TX DL," and "Lack of funds." D.E. 1061-1 at 5-7.

[5] "Just moved here," "Just became resident – don't drive in TX," "Just moved to TX, haven't gotten TX license yet." D.E. 1061-1 at 2-4.

of transportation," "Disability or illness," or "Lack of birth certificate or other documents need to obtain acceptable photo ID." The remaining two "other" statements—"student ID Drivers license," *id.* at 2, and "Out of State College Student," D.E. 1061-1 at 8—state no impediment at all, and nonresidents are not permitted to vote in Texas elections. Tex. Elec. Code §§ 1.015, 11.001-02.

Even under the district court's flawed analysis, it could have avoided any purported harm by retaining the parties' agreed interim remedy. But it refused to. The district court's newfound concern, Exh. 1 at 20, that the State could prosecute individuals for a state-jail felony for intentionally lying on the reasonable-impediment declaration (as under the interim remedy, *see* Tex. Penal Code §§ 37.10(a)(1), (c)(1)), is actually an argument that *no type* of reasonable-impediment exception can ever sufficiently mitigate a photo-voter-ID law's burdens. No other court has ever made such a sweeping holding. *Cf. South Carolina*, 898 F. Supp. 2d at 35-43 (granting VRA §5 preclearance to reasonable-impediment exception allowing for perjury prosecutions). Nor could they, particularly when federal law imposes a greater penalty for perjury in connection with registering or voting in a federal election. *See* 52 U.S.C. §§ 10307(c), 20507(a)(5)(B).

B. The District Court Manifestly Erred in Concluding that SB14 Was Enacted with a Discriminatory Purpose.

The district court's August 23 order said its drastic remedy was purportedly justified based on the court's April 10 discriminatory-purpose finding. Exh. 1 at 2-3. But that purpose finding itself is rife with legal errors and clearly erroneous factual findings. Many of these errors result from the district court's failure to reevaluate

the "totality of the evidence" as ordered by this Court. *Veasey*, 830 F.3d at 237, 272. Despite receiving hundreds of pages of briefing about thousands of pages of evidence—much of it not analyzed in the court's original, vacated ruling—the district court simply adopted its prior findings in a cursory 10-page order that does not even refer to the parties' briefs on remand, except to note their existence.

Plaintiffs have the "demanding" burden, *Easley v. Cromartie*, 532 U.S. 234, 257 (2001), to show that some desire by the Texas Legislature to harm minorities "was a 'but-for' motivation for the enactment of" the SB14 voter-ID law, *Hunter v. Underwood*, 471 U.S. 222, 232 (1985).

1. The District Court Made Significant Legal Errors

a. The district court ignored the presumptions of good faith and validity, which require "extraordinary caution" in analyzing discriminatory purpose.

When a court must make a "factual judgment" necessary to determining the constitutionality of a statute, it must rely on a "heavy presumption" that the statute is constitutional and valid. *U.S. Dep't of Labor v. Triplett*, 494 U.S. 715, 721 (1990); *Davis v. Dep't of Labor & Indus. of Wash.*, 317 U.S. 249, 257 (1942). Facially neutral laws, like SB14, receive a "strong presumption of validity." *Vacco v. Quill*, 521 U.S. 793, 800 (1997). Where there are "legitimate reasons" for government action, courts "will not infer a discriminatory purpose." *McCleskey v. Kemp*, 481 U.S. 279, 298-99 (1987); *see* Exh. 9 at 105-07, 111. "[T]he good faith of a state legislature must be presumed." *Miller v. Johnson*, 515 U.S. 900, 915 (1995).

The district court applied a contrary presumption, interpreting ambiguous or innocuous facts as proof of invidious purpose without considering all the evidence. *See*

infra Part II.B.2. This violates the Supreme Court's directive to "exercise extraordinary caution in adjudicating claims that a State has [engaged in racially-motivated action]," *Miller*, 515 U.S. at 916, by giving "full weight to the presumption, and resolving all doubts in favor of" a law's validity, *Davis*, 317 U.S. at 258.

b. The district court failed to consider relevant evidence, including evidence of SB14's impact.

The district court's failure to consider SB14's impact on white voters provides a clear example of its failure to "reevaluate the evidence relevant to discriminatory intent and determine anew whether the Legislature acted with a discriminatory intent in enacting SB 14." *Veasey*, 830 F.3d at 272. *Feeney*, for example, concluded: "Too many men are affected . . . to permit the inference that the statute is but a pretext for preferring men over women." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 275 (1979). Justice Stevens's concurrence put it succinctly: "the fact that the number of males disadvantaged by [the statute] (1,867,000) is sufficiently large—and sufficiently close to the number of disadvantaged females (2,954,000)—refute[s] the claim that the rule was intended to benefit males as a class over females as a class." *Id.* at 281.

Here, even on plaintiffs' evidence, SB14 impacted too many white voters to support an inference that its classification was a pretext for discrimination against minority voters. *See, e.g.*, *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 552 (3d Cir. 2011). The district court never addressed this argument. Under the evidence accepted below, the number of white voters allegedly burdened by SB14 (296,000) is approximately the same as the *combined* number of similarly situated

African-American voters (128,000) and Hispanic voters (175,000). ROA.43320;[6] *see* Exh. 9 at 83-84, 119-20. In *Feeney*, discriminatory purpose was rebutted because men comprised nearly 40% of the affected class. Here, nearly 50% of those affected by SB14 are not minorities. ROA.43320.

c. The district court failed to account for legislative action (SB5).

The district court's failure to account for legislative action in assessing—or even reconsidering—the purpose claim is an independent legal error. *See Veasey*, 830 F.3d at 272 (instructing the court "to reexamine the discriminatory purpose claim in accordance with the proper legal standards we have described, *bearing in mind the effect any interim legislative action taken with respect to SB 14 may have*") (emphasis added). Courts must provide government entities "the first opportunity to devise remedies for violations of the Voting Rights Act." *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1124 (5th Cir. 1991). And "absent a choice that is either unconstitutional or otherwise illegal under federal law, federal courts must defer to that legislative judgment." *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985) (citing *Upham v. Seamon*, 456 U.S. 37, 40 (1982)). Moreover, a subsequent act is "relevant to intent" behind a previous act if it is not "remote in time." *Ansell v. Green Acres Contracting Co.*, 347 F.3d 515, 524 (3d Cir. 2003).

Despite receiving notice of pending legislative action, the district court refused to give the Legislature the first opportunity to address potential defects in SB14. Shortly after the August 2016 interim order, defendants informed the district court

[6] ROA cites are to the record in the previous *Veasey* appeal (No. 14-41127).

that Governor Abbott would "support legislation during the 2017 legislative session to adjust SB 14 to comply with the Fifth Circuit's decision." D.E.921 at 1. Defendants alerted the district court when SB5 was filed, D.E.995, and when it passed the Senate, D.E.1021. The district court responded by announcing its intent "to issue its new opinion" on discriminatory purpose "at its earliest convenience." D.E.1022 at 7. One week later, and well before the end of the legislative session, the court entered a cursory 10-page order finding discriminatory purpose. Exh. 2.

d. The district court relied on infirm evidence.

Although disclaiming reliance on evidence that this Court declared infirm, the district court actually incorporated that evidence in its opinion. For example, the court's new purpose opinion expressly adopts Part IV(A) of its original ruling. Exh. 2 at 7-9. Yet, in Part IV(A), the district court relied heavily on the expert report of Alan Lichtman. 71 F. Supp. 3d 627, 658-59 (S.D. Tex. 2014); *see also id.* at 700. Lichtman, in turn, relied on the *very same* evidence this Court declared infirm. *Compare Veasey*, 830 F.3d at 229-34 & n.16, *with* ROA.102074-76, 102088, 102134-39. Part IV(A) also erroneously relied extensively on statements by SB14's opponents regarding the purpose of the bill. *See* 71 F. Supp. 3d at 646-59.

2. The District Court Made Numerous Clearly Erroneous Findings.

"[A] reviewing court must ask whether, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed." *Easley*, 532 U.S. at 242 (quotation marks omitted). That standard is met here.

a. The district court ignored contemporaneous statements confirming SB14's legitimate purposes.

The district court granted plaintiffs unprecedented discovery of privileged legislative materials—thousands of internal legislative documents and hours of legislator depositions—that revealed no invidious purpose. *See Veasey*, 830 F.3d at 231 n.13, 235; Exh. 9 at 99-102, 110-13. Tellingly, even SB14 *opponents* said that they believed proponents did not have an invidious motive. Exh. 9 at 60, 77.

When considering circumstantial evidence, courts must consider the "circumstantial totality of the evidence." *Veasey*, 830 F.3d at 237. Here, an overwhelming number of "highly relevant" "contemporaneous statements," *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977), in the record by SB14 proponents confirm that it was passed for its stated neutral purpose—not as a pretext to disadvantage individuals based on race. In each legislative session from 2005 to 2011, voter-ID proponents argued for laws to deter voter fraud and safeguard voter confidence. *See, e.g.*, Exh. 9 at 75-76, 85-86; *see also id.* at 101-02. SB14 proponents explained that they were motivated by the public's overwhelming support for photo-voter-ID laws. *See, e.g.*, *id.* at 32, 86. Part IV(A)(6) of the district court's original opinion—adopted in its new opinion, Exh. 2 at 4-5—conceded "that public opinion polls showed that voters overwhelmingly approved of a photo ID requirement." 71 F. Supp. 3d at 656. "Polls showed approval ratings as high as 86% for Anglos, 83% for Hispanics, and 82% for African-Americans," and "[i]n similar polls conducted in 2011 and 2012, those numbers dropped, but were still over 50%." *Id.*

The district court clearly erred by rejecting that evidence for the *purpose* claim. *See* Exh. 9 at 31-33. The court editorialized that these polls "were not formulated to

obtain informed opinions from constituents," making them irrelevant to determining SB14's "effect." 71 F. Supp. 3d at 656. But they are directly relevant for assessing the *subjective purpose of SB14 proponents*, who relied on those polls and feared that their constituents would vote them out of office if they did not pass a photo-voter-ID law. *See* Exh. 9 at 34.

Contemporaneous statements by SB14 proponents also provided their legitimate reasons for rejecting various amendments. *See id.* at 60-65, 68-70, 73, 134-36; Exh. 10 at 44-49; Exh. 11 at 66-72. Even the House's removal of a Senate amendment creating an indigency-affidavit exception was done for the legitimate, race-neutral reason of preventing voter fraud. This reason was contemporaneously urged by Representative Anchia (an SB14 *opponent*), who argued that, with an indigency affidavit:

> people can come in and never show anything and not be on the list and the ballot board shall accept their [ballot]. . . . But they don't have to prove who they are. They just say they have a religious objection or are indigent.

Exh. 9 at 68. Accepting this criticism, the House excised the indigency-affidavit provision on the stated basis that it made committing voter fraud easier. *Id.* at 69.

Although the district court ignored all these contemporaneous statements, it relied on the non-contemporaneous deposition testimony of an SB14 proponent "that the Voting Rights Act had outlived its useful life." Exh. 2 at 9. But Senator Fraser was referring to VRA § 5 preclearance as it existed in 2012, not the VRA in its entirety. *See* ROA.58470. The Supreme Court confirmed Senator Fraser's view. *Shelby County v. Holder,* 133 S. Ct. 2612 (2013).

b. The district court clearly erred in concluding that historical background showed a discriminatory purpose.

The district court ignored substantial contrary evidence when it readopted its conclusion that SB14 was motivated by demographic changes. Exh. 2 at 6. No contemporaneous statement by an SB14 proponent even hints at such a motivation. The court also ignored that, as the minority population grew in Texas, Republicans achieved greater electoral success. Exh. 9 at 54. The Legislature actively debated voter-ID laws in the 2005, 2007, and 2009 sessions—like many other States after the 2000 election—and opponents resorted to extraordinary procedures to block those bills. *Id.* at 35-54. By 2011, however, Republicans had achieved historic majorities in both houses of the Legislature and controlled nearly every statewide office. *Id.* at 54.

c. The district court clearly erred in concluding that the Legislature's process showed intentional discrimination.

The Legislature's process for considering voter-ID laws was open, exhaustive, and intended to secure an up-or-down vote. Procedural departures might signal pretextual purpose when done to *conceal or avoid scrutiny*. *See, e.g.*, *McCrory*, 831 F.3d at 229; *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 636 (6th Cir. 2016). But legislative procedure does not suggest invidious intent where there is "full and open debate" unaffected by "untoward external pressures or influences." *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 603-04 (4th Cir. 2016); *accord Spurlock v. Fox*, 716 F.3d 383, 399 (6th Cir. 2013).

SB14 was introduced in January at the very beginning of the 2011 session—after six years of debate in three previous sessions—and was not enacted until May at the very end. *See* Exh. 9 at 55, 73-74. The legislative history of SB14 alone comprises

more than 1,500 transcript pages. And there was bipartisan agreement to include the entire 2009 voter-ID legislative record in the 2011 record. Exh. 9 at 59. The Senate debated SB14 for over 17 hours, ROA.68938-69067, 70147-249, and an opponent conceded that "[a]ll 31 Senators . . . had ample opportunity to review the bill," ROA.70147. The House Select Committee debated SB14 for nearly 7 hours. ROA.70324-26, 70332-488, 70541-743. The House debated SB14 for a full day. ROA.70863-925, 71081-178, 71212-407, 71456-596. The Senate adopted 9 (out of 37) amendments, and the House adopted 15 (out of 63) amendments. Exh. 9 at 60; ROA.70114-41, 70965-71036.[7] This included several amendments proposed by SB14 opponents. Exh. 9 at 61-62.

The district court also clearly erred by inferring discriminatory intent from the Governor's 2011 designation of voter-ID as a legislative "emergency." 71 F. Supp. 3d at 647 (adopted at Exh. 2 at 7). That designation does not require a literal emergency; it is a tool frequently used to ensure consideration of particular bills under existing legislative rules. *See* Exh. 9 at 55-56. In the past decade, dozens of bills have been designated as emergency items, *see* Legislative Reference Library of Texas, Emergency Matters Submitted to the Legislature, https://perma.cc/7RNH-FNSL, including two matters in 2011 alongside SB14, ROA.68923.

The district court also drew a clearly erroneous inference from the Senate's suspension of the (since repealed) two-thirds rule and its use of the Committee of the Whole. 71 F. Supp. 3d at 647-48 (adopted at Exh. 2 at 7). Suspension of the two-thirds rule was a common tactic to overcome intransigent opposition—including

[7] Other proposed amendments were withdrawn.

later that same session to secure passage of a budget. *See* Exh. 9 at 43-45. And the suggestion—by a House member, not a Senator—that the Committee of the Whole served "no useful purpose" other than to eliminate delays, 71 F. Supp. 3d at 648 (adopted at Exh. 2 at 7), ignores that the Committee of the Whole disseminates information to the entire Senate and allows any Senator to question witnesses and introduce evidence. Exh. 9 at 51. Debate had been raging in the Legislature for the previous three sessions, and opponents conceded that they understood the arguments and were prepared to offer amendments. *Id.* at 59.

The district court failed to recognize that procedural maneuvers by voter-ID proponents were directed at *allowing debate and consideration*. *See* Exh. 9 at 42, 48, 53. It was voter-ID opponents who used extraordinary tactics in the 2005, 2007, and 2009 sessions to block voter-ID bills from debate and an up-or-down vote. *See id.* at 41-54.

d. The district court clearly erred in concluding that SB14's drafting history suggested a discriminatory purpose.

Most importantly, "the legislature did not call for, nor did it have, the racial data used in the North Carolina process described in *McCrory*." *Lee*, 843 F.3d at 604. While SB14 was stricter than versions considered in prior sessions, the push for a photo-ID law tracks constituent pressure to safeguard election integrity. *See, e.g.*, Exh. 9 at 34.

The district court clearly erred by drawing a negative inference because SB14 "did nothing to address mail-in balloting, which is much more vulnerable to fraud." Exh. 2 at 8 (citing 71 F. Supp. at 641, 653-55). This ignores the Supreme Court's repeated admonishment that "[a] legislature may address a problem 'one step at a

time,' or even 'select one phase of one field and apply a remedy there, neglecting the others.'" *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972). The premise is also misleading: The Legislature *did* prioritize mail-in ballot fraud, addressing that issue in 2003 before it addressed in-person voter fraud, *see* Exh. 9 at 39-40, and twice more before the end of the 2011 session. *See id.* at 49, 70. It addressed mail-in ballot fraud again in 2017. *See* Act of Aug. 11, 2017, 85th Leg., 1st C.S., S.B. 5.

The district court also clearly erred in drawing a negative inference because SB14 purportedly violated a rule against new spending. 71 F. Supp. 3d at 649. Not only was the money at issue dedicated to educating voters, but it was already in the agency's possession and thus was not a state expenditure implicating the spending rule. *See* Exh. 11 at 26-27. Likewise, the court clearly erred in drawing a negative inference from the conference committee *adding* a provision providing for *free* IDs. 71 F. Supp. 3d at 652-63.

SB14 was "the culmination of longstanding official efforts to address" in-person voter fraud, *Spurlock*, 716 F.3d at 397, and part of a broader effort to modernize and secure Texas's electoral system, *see* Exh. 9 at 21-35, 38-41, 45, 49, 54, 70-71. That "other pressing problems facing the legislature did not get the procedural push that SB 14 received," Exh. 2 at 9, is unsurprising, as no other pending legislation was subject to the obstruction faced by voter-ID bills. *See* Exh. 9 at 42, 45 (2005 bill died from opponents' threatened invocation of two-thirds rule); *id.* at 48 (2007 bill died due to two-thirds rule after the Lieutenant Governor gave opponents an extraordinary do-over); *id.* at 53 (2009 bill died after opponents shut down the session by

"chubbing" in the House). This obstruction had prevented other important legislation from being enacted. *Id.* The procedural push was necessary to get an up-or-down vote on a bill that had wide public support. *Id.* at 31-33, 55.

III. The Other Factors Favor a Stay.

"The presumption of constitutionality which attaches to" SB14 "is not merely a factor to be considered in evaluating success on the merits, but an equity to be considered in favor of applicants in balancing hardships." *Walters v. Nat'l Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). States necessarily suffer irreparable injury when their statutes are enjoined. *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers).

Moreover, under the agreed interim remedy, Defendants already spent $2.5 million in 2016 educating Texas voters about the availability of a reasonable-impediment exception. Exh. 3. If Texas cannot use such a procedure for upcoming elections, that effort will be wasted and voter confusion will result.

On the other hand, a stay pending appeal creates no possibility of injury to plaintiffs. Under both the interim remedy and SB5, the seven enumerated reasonable-impediment categories cover every burden alleged by the 14 named plaintiffs and their 13 testifying witnesses. *See* Exh. 6. The United States agrees to a stay. And all plaintiffs already agreed to an interim remedy with a reasonable-impediment exception. *See* Exh. 3.

Conclusion

The Court should stay the district court's permanent injunction pending appeal of the district court's August 23, 2017 order or final judgment.

Respectfully submitted.

/s/ Scott A. Keller

KEN PAXTON
Attorney General

JEFFREY C. MATEER
First Assistant Attorney General

SCOTT A. KELLER
Solicitor General

J. CAMPBELL BARKER
MATTHEW H. FREDERICK
Deputy Solicitors General

JASON R. LAFOND
Assistant Solicitor General

ANGELA V. COLMENERO
Chief, General Litigation Division

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697
scott.keller@oag.texas.gov

Counsel for Appellants

Certificate of Conference

Appellants have contacted or attempted to contact all appellees. The United States consents to this motion. All appellees except two have stated that they will oppose this motion. The remaining two appellees are the Association of Hispanic County Judges and the Texas League of Young Voters Education Fund, which have not stated their intended position.

/s/ Scott A. Keller
Scott A. Keller

Certificate of Service

I certify that this document has been served by ECF or e-mail on August 25, 2017, upon the following:

Chad Wilson Dunn, Esq.
chad@brazilanddunn.com

J. Gerald Hebert, Esq.
hebert@voterlaw.com

Erin Helene Flynn, Esq.
erin.flynn@usdoj.gov

Anna Baldwin
anna.baldwin@usdoj.gov

Diana Katherine Flynn
diana.k.flynn@usdoj.gov

Robert Acheson Koch
Robert.Koch@usdoj.gov

Christine Anne Monta
christine.monta@usdoj.gov

John Albert Smith, III
john.a.smith@usdoj.gov

Vishal Agraharkar
vishal.agraharkar@nyu.edu

Jennifer Clark
jenniferl.clark@nyu.edu

Amy Lynne Rudd
amy.rudd@dechert.com

Lindsey Beth Cohan
lindsey.cohan@dechert.com

Robert Wayne Doggett
rdoggett@trla.org

Jose Garza
jgarza@trla.org

Counsel for Plaintiffs-Appellees

Ryan Paul Haygood
rhaygood@naacpldf.org

Leah Camille Aden
laden@naacpldf.org

Natasha M. Korgaonkar
nkorgaonkar@naacpldf.org

Sonya Ludmilla Lebsack
sonya.lebsack@wilmerhale.com

Deuel Ross
dross@naacpldf.org

Christina A. Swarns
cswarns@naacpldf.org

Amy Lynne Rudd
amy.rudd@dechert.com

Lindsey Beth Cohan
lindsey.cohan@dechert.com

Preston Edward Henrichson
preston@henrichsonlaw.com

Rolando Leo Rios, I
rrios@rolandorioslaw.com

Counsel for Intervenor Plaintiffs-Appellees

/s/ Scott A. Keller
Scott A. Keller

Certificate of Compliance

I certify that, on August 25, 2017, this document was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit via the Court's CM/ECF document filing system.

I certify that (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the electronic submission has been scanned with the most recent version of commercial virus-scanning software and was reported free of viruses.

I certify that this motion complies with the type-volume limitation of Rule 27(d)(2) because it contains 5,170 words, and complies with the typeface and style requirements of Rule 32(a)(5) and (a)(6) because it was prepared in Microsoft Word using 14-point Equity typeface.

/s/ Scott A. Keller
Scott A. Keller

Exhibits for Appellants' Emergency Motion to Stay Pending Appeal District Court Order Granting Permanent Injunction

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-193
	§	
GREG ABBOTT, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING SECTION 2 REMEDIES
AND TERMINATING INTERIM ORDER

In its Opinion of October 9, 2014 (D.E. 628), this Court held that Texas Senate Bill 14 (SB 14)[1] had an impermissible discriminatory effect against Hispanics and African-Americans and was passed with a discriminatory purpose in violation of Section 2 of the Voting Rights Act (VRA) and the 14th and 15th Amendments to the United States Constitution. *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (*Veasey I*). On appeal, the Fifth Circuit, sitting en banc, affirmed the discriminatory effect claim and remanded the discriminatory purpose claim for reconsideration. *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016) (en banc) (*Veasey II*).[2]

In the meantime, the Fifth Circuit instructed this Court to issue an interim remedy to eliminate—or at least reduce—the discriminatory effects of SB 14 for the 2016 general

[1] Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619.

[2] In *Veasey I*, this Court also found in favor of Plaintiffs with respect to two constitutional claims. The claim that SB 14 constituted an unconstitutional burden on the right to vote under the 1st and 14th Amendments was vacated and dismissed under the principle that the VRA provided a remedy and thus those constitutional claims need not be reached. The claim that SB 14 constituted a poll tax under the 14th and 24th Amendments was vacated and rendered on the merits.

election and any other elections to take place before final disposition. As part of its mandate, the Fifth Circuit directed that this Court fashion the interim remedy so as to give effect, if possible, to the Texas legislature's stated interest in securing the integrity of its election process. In that regard, the interim remedy was to include a requirement that those in possession of qualifying SB 14 ID produce it before voting in person. *Veasey II*, at 271.

With the Fifth Circuit's parameters in mind, the parties conferred and presented the Court with an agreed interim order. It required those with SB 14 ID to show it and it instituted a Declaration of Reasonable Impediment (DRI) process for those who did not. Any qualified voter who did not have SB 14 ID was required, under penalty of perjury, to state that he or she did not have qualified ID and was then required to check a box to indicate the reason, including a box for "other," with a line for the "other" explanation. Upon completing the DRI, the individual was permitted to vote a regular ballot. The voter's reason could not be questioned.

The Court approved the interim order, which was a stop-gap measure instituted with a general election, including a United States presidential contest, less than three months away. The remedy was formulated in conformity with the powers and parameters of a VRA Section 2 discriminatory "results" claim. Because of the procedural posture of the case, it did not purport to provide any remedy for the still-pending Section 2/Fourteenth and Fifteenth Amendment discriminatory "purpose" claim.

On remand, this Court again found that SB 14 was passed with a discriminatory purpose. D.E. 1023. Thus Plaintiffs are now entitled to a remedy under VRA Section 2

for both the discriminatory effect and discriminatory purpose of SB 14. To determine the necessary injunctive relief, the Court offered the parties an evidentiary hearing, which they all declined. Instead, they agreed to rely on simultaneously-filed opening and responsive briefing and the existing record. *See* D.E. 1039-41, 1044. Before the Court are the parties' briefs. D.E. 1048, 1049, 1051, 1052, 1056, 1058, 1059, 1060.[3] Also before the Court are Defendants' Motion for Reconsideration of Discriminatory Purpose Ruling in Light of SB 5's[4] Enactment (D.E. 1050) and Private Plaintiffs' Response (D.E. 1066).[5]

For the reasons set out below, the Court DENIES Defendants' motion for reconsideration (D.E. 1050), and GRANTS declaratory and injunctive relief for the Section 2 violations, superseding and terminating the Order Regarding Agreed Interim Plan for Elections (D.E. 895).

MOTION FOR RECONSIDERATION OF DISCRIMINATORY PURPOSE

The Fifth Circuit, noting that the record included sufficient evidence to find that SB 14 was passed with a discriminatory purpose, mandated that this Court reconsider its initial purpose finding in light of the appellate critique of the probative value of certain

[3] In competing advisories, Private Plaintiffs and the United States have sparred over whether the United States may be heard on issues related to the discriminatory purpose claim. D.E. 1064, 1065. The United States withdrew its discriminatory purpose claim and now supports the State Defendants in that regard and takes positions inconsistent with positions previously taken in this case. The Court recognizes that the United States remains a party and has a right to be heard on every issue in this case.

[4] Texas Senate Bill 5, Act of June 1, 2017, 85th Leg., R.S., 2017 Tex. Sess. Laws. ch. 410 (SB 5).

[5] Defendants filed their Motion to Issue Second Interim Remedy or to Clarify First Interim Remedy (D.E. 1047), to which the other parties responded (D.E. 1057, 1061, and 1062). Defendants have since withdrawn that motion. D.E. 1063.

evidence. Defendants now present their third request[6] that this Court defer to the Texas Legislature and treat SB 5 as retroactively purging SB 14 of its discriminatory purpose.

As previously found, the Texas Legislature's subsequent action in passing SB 5—after years of litigation to defend SB 14—does not govern a finding of intent with respect to the previous enactment. Even if such a turning back of the clock were possible, the provisions of SB 5 fall far short of mitigating the discriminatory provisions of SB 14, as detailed more fully below. Along with continued provisions that contribute to the discriminatory effects of the photo ID law, SB 5 on its face embodies some of the indicia of discriminatory purpose—particularly with respect to the enhancement of the threat of prosecution for perjury regarding a crime unrelated to the stated purpose of preventing in-person voter impersonation fraud.

SB 5 does not negate SB 14's discriminatory purpose. The Court DENIES the request (D.E. 1050) to reconsider the discriminatory purpose finding.

SECTION 2 REMEDIES

Among the Private Plaintiffs' requested remedies are (1) a declaratory judgment that SB 14 was passed with a discriminatory purpose and engendered a discriminatory result in violation of the Voting Rights Act and the United States Constitution; (2) injunctive relief in the form of a prohibition against the enforcement of SB 14 and SB 5;

[6] Before the 2017 Texas legislative session convened, Defendants' Proposed Briefing Schedule (D.E. 916) argued that this Court should delay reconsideration of the purpose finding until after that legislative session. The Court rejected that argument when setting the briefing schedule. D.E. 922. During the 2017 legislative session, Defendants and the United States filed their "Joint Motion to Continue February 28, 2017 Hearing on Plaintiffs' Discriminatory Purpose Claims" (D.E. 995). In that motion, they argued that SB 5, then pending, would alter or moot any disposition of the discriminatory purpose claim if and when it was passed into law. The Court denied that motion. D.E. 997. Now that the 2017 legislative session has ended and SB 5 has been enacted and signed into law, Defendants reiterate their argument that the new law purges the old law of its unconstitutionally discriminatory purpose.

and (3) retention of jurisdiction. The United States and the State Defendants request that this Court deny injunctive relief on the basis that SB 5 constitutes an adequate remedy for any violation of law that SB 14 presents. They further oppose retention of jurisdiction on the basis that there is nothing further for this Court to monitor or review. The issue of Section 3 remedies has been reserved for later briefing and decision.

A. Declaratory Relief

The request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 is a natural result of the disposition of the claims made. *See also*, Fed. R. Civ. P. 57. It is further an appropriate foundation for the consideration of Section 3 relief. The Court's Opinion of October 9, 2014 (D.E. 628) and Order on Claim of Discriminatory Purpose of April 10, 2017 (D.E. 1023) effectively grant that request for declaratory relief, which will be included in the Court's final judgment. The Court GRANTS declaratory relief and holds that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments to the United States Constitution.

B. Injunctive Relief

1. Manner of Evaluating Injunctive Relief

Private Plaintiffs seek an injunction completely barring implementation and enforcement of SB 14, Sections 1 through 15 and Sections 17 through 22,[7] as well as SB 5 in order to eliminate the discriminatory law "root and branch." D.E. 1051, p. 4. Defendants and the United States contend that this Court's hands are tied because the

[7] SB 14, § 16, which Private Plaintiffs would leave intact, increased the penalty for voting when ineligible, voting more than once in an election, knowingly impersonating another person so as to vote as that person, and marking another voter's ballot without that person's consent to a second degree felony. *See generally*, Tex. Elec. Code § 64.012(a).

remedies imposed by SB 5 are sufficient to ameliorate SB 14's ills and the Court is bound to defer to that state remedy. Thus the Court's first task is to determine to what extent, if any, the Court must defer to the state's choice of remedy and how, if at all, the Court's jurisdiction extends to interference with SB 5, which was enacted after this Court's determination of the voting rights liability issues on their merits.

Federal courts have broad equitable powers to remedy voting rights violations that implicate constitutional rights. *See Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 15-16 (1971). The Court must fashion its remedy, taking into account "obvious" considerations such as "the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance, . . . what is necessary, what is fair, and what is workable." *North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (quoting *New York v. Cathedral Academy*, 434 U.S. 125, 129 (1977)). Additionally, the Court must act with proper restraint when intruding on state sovereignty. *Covington, supra* at 1626.

What constitutes proper restraint from intrusion is not clear. In *Operation Push*, the Fifth Circuit noted that proper deference to the state meant giving the government the first opportunity to institute its own cure for the VRA § 2 violation. *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 405–06 (5th Cir. 1991). In the prior appeal of this case (*Veasey II*), after discussing the need to fashion an interim remedy, the Fifth Circuit wrote:

> [S]hould a later Legislature again address the issue of voter identification, any new law would present a new circumstance not addressed here. Such a new law may cure the

> deficiencies addressed in this opinion. Neither our ruling here nor any ruling of the district court on remand should prevent the Legislature from acting to ameliorate the issues raised in this opinion.

Veasey II, 830 F.3d at 271. Consistent with these holdings, this Court delayed its remedies decision until after the Texas Legislature's 2017 General Session to give the legislature an opportunity to act. Texas passed SB 5 and it is now this Court's job to determine whether SB 5 cured the unconstitutional discrimination in SB 14.

Nothing further is required in the nature of deference to legislative choices when this Court reviews the substance of SB 5.

> [I]t is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66 (1977). Even if some measure of deference were required (for instance, if relief were being considered only for the discriminatory results claim), that deference yields if SB 5 is not a full cure of the terms that render SB 14 discriminatory.

> "The federal district court is precluded from substituting even what it considers to be an objectively superior plan for an otherwise ***constitutionally and legally valid plan*** that has been proposed and enacted by the appropriate state governmental unit." The district court must accept a plan offered by the local government ***if it does not violate statutory provisions or the Constitution.***

Operation Push, 932 F.2d at 406–07 (a voter registration case, quoting *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985) (a reapportionment case) and citing *Wright v. City of Houston, Miss.*, 806 F.2d 634, 635 (5th Cir. 1986) (a redistricting case)) (emphasis added).[8]

"It is clear that any proposal to remedy a Section 2 violation must itself conform with Section 2." *Dillard v. Crenshaw Cty., Ala.*, 831 F.2d 246, 249 (11th Cir. 1987) (citing *Edge v. Sumter Cty. Sch. Dist.*, 775 F.2d 1509, 1510 (11th Cir. 1985)). The *Dillard* court stated that an element of an election proposal that "will not with certitude *completely* remedy the Section 2 violation" cannot be authorized. *Dillard, supra* at 252. This is consistent with the Fifth Circuit's holding, referencing Supreme Court jurisprudence, that no VRA remedy is permitted if it would allow the perpetuation of an existent denial of VRA rights. *Kirksey v. Bd. of Sup'rs of Hinds Cty., Miss.*, 554 F.2d 139, 143 (5th Cir. 1977).

While there appears to be no dispute that the remedy must pass constitutional muster, each side of this action places the burden of proof on the other. Private Plaintiffs state that "Texas cannot meet its burden to demonstrate that SB 5 fully remedies the discriminatory results of SB 14." D.E. 1051, p. 3. State Defendants and the United

[8] The United States is mistaken when it argues that *Operation Push* placed the burden of proof on those challenging the state's preferred remedy. D.E. 1060, p. 5 (citing *Operation Push*, 932 F.2d at 407). *Operation Push* addressed the state's new statute on two levels: as a remedy for the ills of the old statute and as an imposition of new measures that went beyond remedial concerns. As a remedy, the burden was on the state as the proponent of the measure. That burden was easily met by compliance with the trial court's directives after making findings of discrimination. Because the state's new law went beyond what the trial court had required and because plaintiffs wanted to raise complaints not previously addressed in the liability phase, any such challenge was premature—without proof directed at the consequences of the law's new features. The language the United States relies upon was extracted from the portion of the opinion addressing the placement of the burden with respect to the new (premature) claims.

States rely on the rule of deference to legislative action (addressed above) and the implication that Private Plaintiffs have not satisfied their burden to allege and prove that SB 5 imposes a burden on minority voters. D.E. 1049; 1052, pp. 2-3; 1058, pp. 6, 8 n.3, 14; 1060, pp. 3, 5.

Because Private Plaintiffs have already demonstrated that they are entitled to a remedy that eliminates SB 14's VRA violations, and because the remedy must comply with the requirements of VRA § 2, the burden of proof is on the proponents of SB 5 to show that SB 5 is an appropriate remedy in this case.[9] *United States v. Virginia*, 518 U.S. 515, 547 (1996); *Green v. Cty. Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430, 439 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now."); *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016), *cert. denied sub nom., North Carolina v. North Carolina State Conference of NAACP*, 137 S. Ct. 1399 (2017). If SB 5 does not cure the Section 2 violations, then this Court may enjoin the enforcement of SB 14 and SB 5 pursuant to the Court's equitable power to protect Private Plaintiffs' rights.

SB 5—as a proposed remedy—is "in part measured by the historical record, in part measured by difference from the old system, and in part measured by prediction." *Dillard*, 831 F.2d at 250. Thus the Court's decision is based on the evidence already of

[9] It would be premature to try to evaluate SB 5 as the existing voter ID law in Texas because there is no pending claim to that effect before the Court, which claim would place the burden of proof elsewhere—on the claimant. Consideration of SB 5 in the context of a remedy for SB 14's ills places the burden on SB 5's proponents. *See Operation Push*, 932 F.2d at 407 (declining to evaluate the remedial statute as raising new VRA claims). To require the Private Plaintiffs to bear the burden on every legislative remedy that might be passed would present Plaintiffs with a "moving target," preventing any final resolution of this case.

record in this case,[10] an evaluation of the parties' respective arguments as to the curative nature of SB 5 as compared to SB 14, and the Court's prospective conceptualization of the impact of SB 5's requirements. This inquiry has been facilitated by the legislature's choice to build on the existing SB 14 framework rather than begin anew with an entirely different structure.

State Defendants and the United States rely heavily on a comparison between SB 5 and the interim remedy. However, the Court notes that, because of the agreed, interim nature of that remedy and the parties' waiver of an evidentiary hearing on the full and permanent remedy to be imposed, the record holds no evidence regarding the impact of the interim Declaration of Reasonable Impediment (DRI), either in theory or as applied. So while the Court acknowledges that Private Plaintiffs were willing to accept a DRI remedy on an interim basis as a partial remedy, the Court does not treat that temporary compromise as a binding determination that a DRI will cure the Section 2 violations.

2. SB 5 Does Not Render SB 14 a Constitutional and Legally Valid Plan

Pursuant to the scope and standard of review set out above, the Court revisits SB 14's failings and then compares them to SB 5's terms. The Court's Section 2 findings are based on several features of SB 14, which alone or in combination unconstitutionally discriminate against African-Americans and Hispanics with respect to the right to vote.

[10] As Private Plaintiffs have observed, SB 5 is built upon the "architecture" of SB 14. SB 5 brings forward many of SB 14's terms, such that the existing record addresses much of the Section 2 analysis that must be applied to SB 5.

While detailed more fully in the Court's previous Orders,[11] those features may be categorized as:

a. **Type of ID**: The limited number and type of photo IDs that can be used to vote, along with the prohibition on the use of photo IDs that have been expired more than 60 days prior to the election;

b. **Obstacles to Obtaining ID**: The financial, geographic, and institutional obstacles to obtaining qualifying photo ID or the underlying documentation necessary to obtain qualifying photo ID;

c. **Exemptions:** The limitations on the sources that may be used to support an exemption for a disability;

d. **Alternative Proof**: The onerous provisional ballot process, requiring that the voter cure the ID issue within six days of voting before the vote may be counted; and

e. **Education**: Educational provisions that (1) fail to provide voters with timely notice of what is required and instructions regarding how to obtain qualified SB 14 ID, if possible, and (2) fail to train poll workers so that they do not deny the right to vote to qualified voters.

Veasey I, 71 F. Supp. 3d at 641-42. The Court evaluates SB 5's provisions with respect to each of these troubling features, below:

a. **Type of ID**:

- Under SB 5, "United States passport" is amended to state "United States passport book or card."

- SB 5 enlarges the amount of time a qualifying ID may be expired from 60 days to 4 years. Voters over 70 years of age do not have a limit on the amount of time their ID may be expired.

[11] The Court made extensive fact findings on these issues in its initial decision, which findings are incorporated into this Order by reference.

The clarification that both passport books and cards are accepted does not necessarily expand the reach of qualifying IDs because (a) there is no evidence that only passport books were permitted under SB 14, which permitted the use of "passports," and (b) the requirements for obtaining either form of passport include underlying documents of the type likely to exclude minorities, along with the requirement of the payment of a substantial fee.[12] This feature remains discriminatory because SB 5 perpetuates the selection of types of ID most likely to be possessed by Anglo voters and, disproportionately, not possessed by Hispanics and African-Americans. Those findings were set out in the Court's prior Opinion.

SB 5 does not meaningfully expand the types of photo IDs that can qualify, even though the Court was clearly critical of Texas having the most restrictive list in the country. *Veasey I*, 71 F. Supp. 3d at 642-43. For instance, Texas still does not permit federal or Texas state government photo IDs—even those it issues to its own employees. SB 5 permits the use of the free voter registration card mailed to each registered voter and other forms of non-photo ID, but only through the use of a Declaration of Reasonable Impediment (DRI) more fully addressed below. Because those who lack SB 14 photo ID are subjected to separate voting obstacles and procedures, SB 5's methodology remains discriminatory because it imposes burdens disproportionately on Blacks and Latinos.

SB 5's expansion of the amount of time a prescribed form of identification may be used—from sixty (60) days to four (4) years before the date of the election—is one way

[12] *See*, https://travel.state.gov/content/passports/en/passports/information/fees.html (passport cards, the less expensive of the two forms of passport, carry a $30 application fee and a $25 execution fee).

to reduce the draconian aspect of the photo ID requirement. However, there is no evidence that it appreciably reduces the comparative discriminatory effect of the law. Instead, the provision may actually exacerbate the discrimination. The greatest benefit from SB 5's liberalized requirements is conferred on voters over the age of 70, for whom there is no limit to the use of expired (but still qualified types of) photo ID. According to the evidence at trial, that class of voters is disproportionately white. Lichtman, PX 772, pp. 64-65.

The Court concludes that SB 5's limited provisions addressing the types of photo IDs that may be used for voting and their expiration dates do not ameliorate the discriminatory effects or the discriminatory purpose of SB 14 with respect to the limited forms of qualified SB 14 ID.

b. **Obstacles to Obtaining ID**:

- SB 5 provides for free mobile units that can travel the state and issue Election ID Certificates (EICs) upon request by constituent groups or at special events.

- Any request for a mobile unit can be denied if required security or other "necessary elements of the program" cannot be ensured. The Secretary of State is empowered to adopt rules to implement the mobile unit program.

Mobile EIC units were originally offered with SB 14. However, the evidence at trial was that they were too few and far-between to make a difference in the rates of qualifying voters. Their mobile nature made notice and duration major factors in their effectiveness. *See Veasey I*, 71 F. Supp. 3d at 679 & n.398, 687. Yet nothing in SB 5 addresses the type of advance notice that would be given in order to allow voters to

assemble the necessary documentation they might need in time to make use of the units. And the idea that the units be made available at "special events" or upon request of "constituent groups" (undefined terms) implies a limited duration appearance at limited types of events.

Moreover, SB 5 contains no provisions regarding the number of mobile EIC units to be furnished or the funding to make them available. Requests for them can be denied for undefined, subjective reasons, placing too much control in the discretion of individuals. The Court concludes that the provision for mobile EIC units does not appreciably ameliorate the discriminatory effects or purpose of SB 14 with respect to the obstacles to obtaining qualified photo ID.

c. **Exemptions**:

- SB 5's reasonable impediment declaration provision allows listing a disability or illness as a reason to vote without qualifying ID.

This provision eliminates the objection regarding the limited sources needed to support a disability exemption from the strict requirements of SB 14. However, its amelioration is dependent upon the DRI procedure, which has its own limitations, as addressed below.

d. **Alternative Proof**:

- SB 5 allows the use of a Declaration of Reasonable Impediment (DRI) that supplants the provisional ballot procedure for those who are registered, but do not have qualified SB 14 photo ID.

- SB 5 requires that any DRI include a threat of criminal penalties for perjury and it increases those penalties with respect to a DRI to a state jail felony.

SB 5 uses the DRI procedure in place of the SB 14 provisional ballot/cure procedure. Defendants and the United States argue that the DRI procedure should eliminate the complaints of discrimination because it offers voters a way to vote a regular ballot if they do not have and cannot reasonably obtain SB 14 photo ID for one or more of six reasons: lack of transportation; lack of birth certificate or other documents needed to obtain the prescribed identification; work schedule; lost or stolen ID; disability or illness; family responsibilities; and the ID has been applied for, but not received. They further argue that the DRI's acceptability should not be questioned because it was the procedure the Private Plaintiffs agreed to as the interim remedy previously imposed by this Court. However, the interim remedy was never intended to be the final remedy and it did not address the discriminatory purpose finding. Additionally, SB 5 imposes some material departures from the interim remedy.

The interim DRI remedy was a negotiated stop-gap measure addressing a quickly-advancing general election, pending the final resolution of additional issues in this case. It was formulated as a counterpart to the Fifth Circuit's directive that those who had SB 14 photo ID be required to produce it in order to vote. The DRI was negotiated as, and intended to be, only a partial, temporary remedy. Its use under those circumstances does not pretermit the question whether it is appropriate full and final relief in this case—or that it was the choice the Court would have imposed had the parties not agreed.

Because of the posture of the case, the interim DRI remedy was limited to addressing the discriminatory results claim. This Court is now considering a remedy for both the results and the discriminatory purpose claim. The breadth of relief available to redress a discriminatory purpose claim is greater than that for a discriminatory results claim. *See Veasey II*, 830 F.3d at 268 & n.66 (citing *City of Richmond v. United States*, 422 U.S. 358, 378 (1975) and *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 465–66, 471, 487 (1982) for the proposition that the discriminatory purpose finding, as opposed to the results finding, supports enjoining the entire offending statute).

Moreover, SB 5's DRI differs materially from the interim DRI. Initially, Private Plaintiffs complain that SB 5 allows the use of only a "domestic" birth certificate, eliminating the ability of naturalized citizens—disproportionately Hispanics—to use their foreign birth certificates to prove identity. D.E. 1051, p. 15. Private Plaintiffs do not cite to any evidence upon which they base their representation that Hispanics in Texas are disproportionately impacted by this provision. While very likely true, the Court's decision must be supported by the record, which the parties declined to expand for this remedy phase. The Court has not been directed to any evidence regarding the proportion of naturalized citizens who are Hispanic and does not recall any such evidence. The Court's decision does not rest on this assertion or this particular complaint.

The most concerning difference between the interim DRI and the SB 5 DRI is the elimination of the "other" category as the basis for the voter's lack of SB 14 ID. Defendants complain that this open alternative permitted 19 voters who used the DRI

procedure to simply protest SB 14. D.E. 1049, p. 16, D.E. 1049-2.[13] However, it was also used for reasonable excuses related to the issues supporting Private Plaintiffs' challenge to SB 14, including financial hardship and the misunderstanding or misapplication of SB 14 or the prerequisites for obtaining SB 14 photo ID.[14]

Giving registered voters an opportunity to explain their impediment in their own words reduces the chance that a misunderstanding of the law or its requirements will deprive them of their franchise. And there is no evidence in this record that any of the persons using the "other" category were not the registered voters they said they were. Eliminating this alternative is a material change to the interim DRI remedy. It does not necessarily advance the state's interest in secure elections. And the change takes on added meaning because of the increased penalties for perjury instituted by SB 5.

Listing a limited number of reasons for lack of SB 14 is problematic because persons untrained in the law and who are subjecting themselves to penalties of perjury may take a restrictive view of the listed reasons. Because of ignorance, a lack of confidence, or poor literacy, they may be unable to claim an impediment to which they are entitled for fear that their opinion on the matter would not comport with a trained prosecutor's legal opinion. Consequently, the failure to offer an "other" option will have

[13] As previously noted, the parties declined an evidentiary hearing in connection with the remedies phase of this case. Nonetheless, no party has objected to the submission of these DRIs. In fairness, the Court considers these DRIs as well as those offered by the Private Plaintiffs in connection with motion briefing.

[14] In connection with motion briefing, Private Plaintiffs submitted DRIs that listed the following reasonable impediments: just moved to Texas; just became resident of Texas and don't drive in Texas; just moved to Texas, haven't gotten license yet; financial hardship; unable to afford Texas Driver's License; lack of funds; out of state college student; and attempted to get Texas EIC but they wanted a long form birth certificate. D.E. 1061-1.

a chilling effect, causing qualified voters to forfeit the franchise out of fear, misunderstanding, or both.[15]

The State Defendants claim that a DRI insulates a voter photo ID law from complaints of discrimination. D.E. 1049, p. 13 (citing *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012) (mem. op.) (preclearance decision). However, the court in *South Carolina* repeatedly emphasized the fact that the DRI procedure offered there included a voter's ability to claim any reason whatsoever—as long as it was true—in order for his or her vote to be counted.[16]

The State Defendants suggest that the loss of the "other" option under SB 5 is a fair trade-off for the fact that Texas does not have a mechanism for rejecting votes tendered by a voter using a DRI for identification. D.E. 1049, p. 15. Defendants have offered no evidence to support this assertion. Neither have they offered evidence that the reason a voter has no qualified ID makes any difference in identifying a voter so as to prevent fraud. In the *South Carolina* case, the state was to follow up with voters who did not have qualified ID to assist in getting ID so there was a logical reason to identify the impediment. Texas has offered no reason to identify a voter's reasonable impediment. Without evidence to justify the trade-off, this Court will not allow defects in Texas's

[15] The Court is sympathetic to the state's frustration with voters who used the "other" box to list questionable reasons or to protest SB 14. However, elimination of all other conceivable explanations for a lack of qualified ID, thus relegating voters to cryptic explanations that may or may not be properly understood, is a harsh response that does not necessarily make elections more secure.

[16] It should also be noted that the South Carolina voter photo ID law expanded the types of IDs that could be used, made getting the IDs much easier than had been the case prior to the law's enactment, included a wide-open DRI process, and contained detailed provisions for educating voters and poll workers regarding all new requirements.

election system to justify disproportionate burdens on Hispanic and African-American voters.

The prescribed form of the DRI addresses two separate issues, only one of which relates to the stated purpose of the statutes: to prevent in-person voter impersonation fraud. When a person signs the DRI prescribed by SB 5, that person first attests to being a particular registered voter on the Secretary of State's list. The DRI then inquires into why that registered voter does not have one of the limited forms of photo ID the state is willing to accept. Nothing in the record explains why the state needs to know that a person suffers a particular impediment to obtaining one of the qualified IDs. The impediments do not address whether the persons are who they say they are and the impediments are not being used to assist in obtaining qualified ID. There is no legitimate reason in the record to require voters to state such impediments under penalty of perjury and no authority for accepting this as a way to render an unconstitutional requirement constitutional.

Requiring a voter to address more issues than necessary under penalty of perjury and enhancing that threat by making the crime a state jail felony appear to be efforts at voter intimidation. SB 5, § 3. The record reflects historical evidence of the use of many kinds of threats and intimidation against minorities at the polls—particularly having to do with threats of law enforcement and criminal penalties. *Veasey I*, 71 F. Supp. 3d at 636-37, 675.

Thus the DRI procedure does not represent a remedy that puts victims of discrimination in the position they would have occupied absent discrimination.

> A remedial decree, [the Supreme] Court has said, must closely fit the constitutional violation; it must be shaped to place persons unconstitutionally denied an opportunity or advantage in "the position they would have occupied in the absence of [discrimination]." *See Milliken v. Bradley*, 433 U.S. 267, 280, 97 S.Ct. 2749, 2757, 53 L.Ed.2d 745 (1977) (internal quotation marks omitted). . . . A proper remedy for an unconstitutional exclusion, we have explained, aims to "eliminate [so far as possible] the discriminatory effects of the past" and to "bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154, 85 S.Ct. 817, 822, 13 L.Ed.2d 709 (1965).

United States v. Virginia, 518 U.S. 515, 547 (1996).

As to the severity of the penalty of perjury, the United States argues that the increase to a state jail felony cannot be discriminatory because that penalty is less than the maximum penalty permitted for perjury in connection with registering or voting in a federal election under federal law, citing 52 U.S.C. §§ 10307(c) and 20507(a)(5)(B). But the falsity punished by § 10307(c) about which the voter must be notified under § 20507(a)(5)(B) is "information as to his name, address or period of residence in the voting district." These are clear, objective facts. There is no federal penalty associated with any tangential issue, such as mistakenly claiming a particular impediment to possession of qualified ID—information that is subjective, may not always fit into the State's categories, and could easily arise from misinformation or a lack of information from the State itself as to what is required.

The United States further argues that there is no evidence that there have been prosecutions for perjury under the interim DRI or that the process has had a chilling effect. Yet current restraint does not preclude future prosecutions or intimidation.

The Court has found that SB 14 was enacted with discriminatory intent—knowingly placing additional burdens on a disproportionate number of Hispanic and African-American voters. The DRI procedure trades one obstacle to voting with another—replacing the lack of qualified photo ID with an overreaching affidavit threatening severe penalties for perjury. While the DRI requires only a signature and other presumably available means of identification, the history of voter intimidation counsels against accepting SB 5's solution as an appropriate or complete remedy to the purposeful discrimination SB 14 represents. *See McCrory*, 831 F.3d at 240-41 (refusing to accept the obstacles represented by a DRI procedure as a remedy for another set of obstacles created by a voter photo ID law; instead, the offending law was enjoined).

The Court concludes that SB 5 is insufficient to remedy the discriminatory purpose and effects of SB 14's alternative proof requirements.

e. **Education**:

- SB 5 is silent on the type or extent of any necessary educational or training programs.
- SB 5 provides no funding or budget for any such programs.

In its prior Opinion, the Court noted that SB 14's sea change in the requirements for voting could not be accomplished in a fair and effective manner without widespread education for voters and training for poll workers. *See Veasey I*, 71 F. Supp. 3d at 642, 649. And the Fifth Circuit recognized that educational efforts were necessary to ensure that any change to the voting rights is effective as to both voters and poll workers. *Veasey II*, 830 F.3d at 271-72. Yet SB 5 does not address this issue at all.

Texas claims that it has publicly stipulated to a four million dollar education and training program, but this stipulation is not part of SB 5 or any other statute.[17] And there is no evidence that the legislature has budgeted the funds, earmarked for that purpose. The Court concludes that the terms of SB 5 do not create an effective remedy for the discriminatory features of SB 14 regarding education and training.

Not one of the discriminatory features of SB 14 is fully ameliorated by the terms of SB 5. The SB 5 DRI process is superior to the provisional ballot process of SB 14 in addressing those who have impediments to obtaining the necessary photo ID. But it leaves out an important feature of the interim DRI. And even the interim DRI was not a full remedy for either the discriminatory effects or discriminatory purpose of SB 14 to be remedied under VRA Section 2. The Court rejects SB 5 as an adequate remedy for the findings of discriminatory purpose and discriminatory effect in SB 14.

3. Injunctive Relief is Appropriate as to Both SB 14 and SB 5

Defendants and the United States have failed to sustain their burden of proof that SB 5 fully ameliorates the discriminatory purpose or result of SB 14. They have not shown that SB 5, together with SB 14, constitutes a constitutional and legally valid plan. Therefore, the question becomes whether the Court can and should craft and institute a different voter photo ID plan in an attempt to salvage some of the intent of the photo ID effort. In contrast, the Court can permanently enjoin the enforcement of SB 14 and SB 5,

[17] *See* D.E. 1039, 1051, 1058, p. 18. The Court does not credit this unsworn suggestion on this record, in which all parties eschewed the opportunity to present additional evidence.

returning Texas to the law that preceded the 2011 enactment. The Texas legislature can then address anew any voter ID measures it may feel are required.

Counseling against this Court's formulation of its own voter ID plan are several issues. First, the Court's finding of discriminatory intent strongly favors a wholesale injunction against the enforcement of any vestige of the voter photo ID law. Second, the lack of evidence of in-person voter impersonation fraud in Texas belies any urgency for an independently-fashioned remedy from this Court at this time.[18] There is no apparent harm in the delay attendant to allowing the Texas legislature to go through its ordinary processes to address the issues in due legislative course. Third, making informed choices regarding the expansion of the types of IDs or the nature of any DRI would require additional fact-findings on issues not currently before the Court. These matters, regarding reliable accuracy in photo ID systems, are better left to the legislature.

Consequently, the only appropriate remedy for SB 14's discriminatory purpose or discriminatory result is an injunction against enforcement of that law and SB 5, which perpetuates SB 14's discriminatory features. With respect to the VRA § 2 discriminatory purpose finding, elimination of SB 14 "root and branch" is required, as the law has no legitimacy. *E.g., City of Richmond, Virginia v. United States*, 422 U.S. 358, 378-79

[18] The State Defendants submitted their Advisory Regarding Record Evidence on Voter Fraud in response to the Court's inquiry regarding record evidence of actual fraud. D.E. 1011. That Advisory is replete with accounts of allegations and investigations, but not of any findings or convictions for in-person voter impersonation fraud. As this Court previously found, there were only two votes cast that resulted in fraud convictions in the ten years prior to passage of SB 14 and the rate of referrals, investigations, and convictions (detection and deterrence) did not increase during the time SB 14 was in place. *Veasey I*, 71 F. Supp. 3d at 639.

(1975); *Green v. Cty. Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430, 437-38 (1968).[19] This is consistent with the result in *McCrory*, 831 F.3d at 239-41. There, the Fourth Circuit found that the voter photo ID law had been passed with a discriminatory purpose. While different in details, the North Carolina law was faulted, in part, for its discriminatory selection of qualified IDs. The North Carolina DRI—different in its details—was held to simply trade one set of obstacles for another and was not considered sufficient to offset the discriminatory purpose of the law. Neither did it place those who were impacted by the law back in the place they occupied prior to its enactment. "[T]he proper remedy for a legal provision enacted with discriminatory intent is invalidation." *McCrory*, 831 F.3d at 239. This remedy prevents any lingering burden on African-Americans and Hispanics. *Id*. at 240.

That is not to say that invalidation is always required. The parties have identified some cases in which the remedy accepted some part of the discriminatory law. For instance, *City of Port Arthur v. United States*, 459 U.S. 159, 168 (1982), involved a new election plan for a city council, necessitated by the city's annexations that expanded its boundaries. Practically speaking, then, there was no status quo ante to return to.

The *City of Port Arthur* trial court had been presented with a series of plans regarding at-large and single member districts. By the time the third evolution of the plan was proposed, the Court had identified a single remaining flaw: the majority rule, which required that the successful candidate in a multi-candidate contest receive more than fifty

[19] The parties disagree on whether an ongoing federal violation must be demonstrated in order to issue injunctive relief. Because the Court has found that a continuing violation exists despite the enactment of SB 5, this argument is moot.

percent of the vote. The trial court eliminated that feature in order to make the plan comply with Section 2 and the Constitution. On appeal, the Court held that the decision was within the trial court's equitable discretion.

The Supreme Court delayed the implementation of a new election provision in *Louisiana v. United States*, 380 U.S. 145, 154 n.17 (1965), so that all previously registered voters would be on the same page when the new provision went into effect. Delay of SB 5 would do nothing here to make the Texas plan less discriminatory. SB 5 is an improvement over SB 14, but it does not eliminate the discrimination in the choice of photo IDs, which disproportionately continues to impose undue burdens on Hispanics and African-Americans.

Operation Push, 932 F.2d 400, also cited as a case taking a hands-off approach to new legislation, is distinguishable. Insofar as the new legislation was evaluated as a remedy for violations previously found, it succeeded and was accepted. Insofar as it instituted new provisions that had not previously been challenged, there was no jurisdictional basis upon which to take action. In contrast, SB 5 fails to cure certain SB 14 discriminatory features that have been adjudicated. Consequently, as a remedy, it does not ameliorate SB 14's violations. Its new features do not function without the discriminatory features it perpetuates. Therefore, the remedy of the SB 14 issues necessarily invalidates SB 5 for all purposes.

Defendants argue that the discriminatory taint of SB 14 can no longer control the remedy because SB 5 stripped SB 14 of its discriminatory purpose, citing *Cotton v. Fordice*, 157 F.3d 388, 391 (5th Cir. 1998). In *Cotton*, the issue was the

disenfranchisement of convicted criminals. In 1890, the measure was passed as a way to suppress the Black vote. The crimes that triggered disenfranchisement were only those crimes thought to be committed primarily by Blacks. In that respect, it originally omitted murder and rape. In 1950 and 1968, the statute was amended to first remove burglary and then include murder and rape. Cotton, convicted of armed robbery, sued on the basis that the statute was discriminatory, based on the original motivation in 1890.

The Fifth Circuit held that the original taint of discrimination had subsided over the hundred years the statute had been in place—amended in ways that validated its facial neutrality and eliminated some discriminatory terms. The same dissipation of discrimination cannot be said to have occurred here, where only six years have passed, SB 5 was passed only after SB 14 was held to be unconstitutionally discriminatory and while the remedies phase of this case remained pending, and a large part of what makes SB 14 discriminatory—placing a disproportionate burden on Hispanics and African-Americans through the selection of qualified photo IDs—remains essentially unchanged in SB 5.

The Court's injunctive power extends to SB 5, consistent with the Court's power to prevent repetition of unlawful conduct. *City of Mesquite v. Aladdin's Castle, Inc*., 455 U.S. 283, 289 & n.10 (1982). The Court has found that the SB 5 DRI process does not fully relieve minorities of the burden of discriminatory features of the law. Thus the Court has the power to enjoin SB 5 as a continuing violation of the law as determined in this case. The Court thus issues injunctive relief to prevent ongoing violations of federal law and the recurrence of illegal behavior. *Id*.

C. Retention of Jurisdiction

Because the permanent injunction against enforcement of SB 14 and SB 5 does not require any continued monitoring, the Court DENIES the request that it retain jurisdiction over this matter. *See generally*, *McCrory*, 831 F.3d at 241. The need, if any, for continued supervision of Texas election laws under the preclearance provisions of the Voting Rights Act is reserved for, and will be considered in, the Court's consideration of Section 3(c) relief.

CONCLUSION

For the reasons set out above, the Court

- DENIES the request (D.E. 1050) to reconsider the discriminatory purpose finding;
- GRANTS declaratory relief and holds that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments to the United States Constitution;
- GRANTS a permanent injunction against enforcement of SB 14, Sections 1 through 15 and Sections 17 through 22;
- GRANTS a permanent injunction against enforcement of SB 5;
- DENIES the request for continuing post-judgment jurisdiction as to relief under VRA Section 2;
- ORDERS the parties to confer and file on or before August 31, 2017, memoranda—not to exceed 7 pages—stating whether an evidentiary hearing is requested for the consideration of VRA § 3(c) relief and the preferred briefing schedule for same.

ORDERED this 23rd day of August, 2017.

Nelva Gonzales Ramos
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-193
	§	
GREG ABBOTT, *et al*,	§	
	§	
Defendants.	§	

ORDER ON CLAIM OF DISCRIMINATORY PURPOSE

After en banc review of the record in this case, the Fifth Circuit majority held that there was sufficient evidence to sustain a conclusion that the Texas voter photo identification bill, SB 14,[1] was passed with a discriminatory purpose, despite its proponents' assertions that it was necessary to combat voter fraud. *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016) (*Veasey II*). At the same time, the Fifth Circuit held that certain evidence outlined in this Court's prior opinion[2] was not probative of discriminatory intent and posited that this Court may have been unduly swayed by that evidence in making its determination of this issue.

To test that theory, and because "it is not an appellate court's place to weigh evidence,"[3] the Court remanded the matter to this Court. This Court is thus charged with reexamining the probative evidence underlying Plaintiffs' discriminatory purpose claims weighed against the contrary evidence, in accord with the appropriate legal standards the

[1] Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619.

[2] *Veasey v. Perry*, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014).

[3] *Veasey II*, at 241 (citing *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1317 (5th Cir. 1991)).

Fifth Circuit has described. *Veasey II*, at 242. The Fifth Circuit instructed that this Court was not to reopen the evidence, but to rely on the record developed at the bench trial of this case, held in September 2014. *Veasey II*, at 242.

Consistent with those instructions, the Court permitted the parties to propose new findings of fact and conclusions of law and re-brief the issue. *See* D.E. 960, 961, 962, 963, 965, 966, 975, 976, 977, 979, 980. On February 28, 2017, the Court heard oral argument. After appropriate reconsideration and review of the record, and for the reasons set out below, the Court holds that Plaintiffs have sustained their burden of proof to show that SB 14 was passed, at least in part, with a discriminatory intent in violation of the Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301(a).

STANDARD OF REVIEW

The rubric for the question—whether SB 14 was passed with a discriminatory purpose—was set out in the Supreme Court's decision, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-68 (1977). *Veasey II*, at 230. Under *Arlington Heights*, discriminatory intent is shown when racial discrimination was a motivating factor in the governing body's decision. Discriminatory purpose "implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,'. . . its adverse effects upon an identifiable group." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (internal citations and footnotes omitted). Racial discrimination need not be the primary purpose as long as it is one purpose. *Velasquez v. City of Abilene*, 725 F.2d 1017, 1022 (5th Cir. 1984).

Rather than attempt to discern the motivations of particular legislators, the Court considers all available direct and circumstantial evidence of intent, "including the normal inferences to be drawn from the foreseeability of defendant's actions." *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009) (internal quotation marks and citations omitted). The Supreme Court in *Arlington Heights* considered the following factors as informing the intent decision:

(1) The disparate impact of the legislation;

(2) Whether there is a clear pattern, unexplainable on grounds other than race, which emerges from the effect of the state action even when the governing legislation appears neutral on its face;

(3) The historical background of the decision;

(4) Whether the decision departs from normal procedural practices;

(5) Whether the decision departs from normal substantive concerns of the legislature, such as whether the policy justifications line up with the terms of the law or where that policy-law relationship is tenuous; and

(6) Contemporaneous statements by the decisionmakers and in meeting minutes and reports.[4]

Arlington Heights, supra at 266 (paraphrased). If Plaintiffs' evidence establishes that discriminatory purpose was at least one of the substantial or motivating factors behind passage of SB 14, "the burden shifts to the law's defenders to demonstrate that the law

[4] This includes the legislative drafting history, which can offer interpretive insight when the legislative body rejected language or provisions that would have achieved the results sought in Plaintiffs' interest. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006).

would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

DISCUSSION

1. Disparate Impact

This Court found that SB 14 had a discriminatory impact, supporting Plaintiffs' results claim under Section 2. *Veasey v. Perry*, 71 F. Supp. 3d 627, 659-79 (S.D. Tex. 2014) (*Veasey I*). With one exception,[5] the related findings in part IV(B) and conclusions in part VI(B)(1) were undisturbed on appeal and the Fifth Circuit affirmed the discriminatory result claim. *Veasey II*, at 264-65. Without setting forth the associated findings at length, this Court adopts its prior findings and conclusions, with the exception of those related to the potential effect of racial appeals in political campaigns. Plaintiffs have satisfied the disparate impact factor of the discriminatory purpose analysis.

2. Pattern Unexplainable on Non-Racial Grounds

In parts IV(A)(4) and (5) of this Court's prior opinion, it detailed a number of efforts, which the Texas legislature rejected, that would have softened the racial impact of SB 14. *Veasey I*, at 651-53 & Appendix. For instance, amendments were proposed to allow additional types of photo identification, a more liberal policy on expired documents, easier voter registration procedures, reduced costs for obtaining necessary ID, and more voter education regarding the requirements. At the same time, there was no substance to the justifications offered for the draconian terms of SB 14, noted in part

[5] The Fifth Circuit did not overturn the fact finding, but held that anecdotal evidence of racial campaign appeals did not necessarily show that SB 14 abridged the right to vote. *Veasey II*, at 261. On remand, this Court assigns no weight to that anecdotal evidence.

IV(A)(6) of the opinion. *Veasey I*, at 653-59. This Court then concluded, in part VI(B) of the opinion, that these efforts revealed a pattern of conduct unexplainable on non-racial grounds, to suppress minority voting. *Veasey I*, at 694-703.

In connection with the discriminatory purpose analysis, the Fifth Circuit wrote, approving of this evidence:

> The record shows that drafters and proponents of SB 14 were aware of the likely disproportionate effect of the law on minorities, and that they nonetheless passed the bill without adopting a number of proposed ameliorative measures that might have lessened this impact. For instance, the Legislature was advised of the likely discriminatory impact by the Deputy General Counsel to the Lieutenant Governor and by many legislators, and such impact was acknowledged to be "common sense" by one of the chief proponents of the legislation.

Veasey II, at 236. This is some evidence of a pattern, unexplainable on grounds other than race, which emerges from the effect of the state action even when the governing legislation appears neutral on its face. Again, without setting forth the associated findings at length, this Court adopts its prior findings and conclusions with respect to the pattern of conduct unexplainable on grounds other than race factor.

3. Historical Background

In discussing SB 14's historical background for purposes of the discriminatory intent analysis, this Court included a prefatory sentence referencing Texas's long history of discriminatory practices, which was set out in a separate section of the opinion. *Veasey I*, at 700. The Court's reference was for context only. Treated as only providing

perspective, the Court did not, and does not, assign distant history any weight in the discriminatory purpose analysis.

With respect to the question at hand, the Fifth Circuit held that historical evidence, to be relevant, must be "reasonably contemporaneous." *Veasey II*, at 232 (citing *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987) and *Shelby Cty. v. Holder*, ___ U.S. ___, 133 S.Ct. 2612, 2618-19 (2013). The evidence upon which the Court previously relied dated from 2000 forward. *Veasey I*, at 700 (part VI(B)(2)(Historical Background)). Included was the contemporary seismic demographic shift by which Texas had become a majority-minority state and polarized voting patterns allowing the suppression of the overwhelmingly Democratic votes of African–Americans and Latinos to provide an Anglo partisan advantage. The Fifth Circuit found no fault with this evidence and this Court adopts these findings anew.

The Fifth Circuit also credited other historical events from the 1970s forward.

> [A]s late as 1975, Texas attempted to suppress minority voting through purging the voter rolls, after its former poll tax and re-registration requirements were ruled unconstitutional. It is notable as well that "[i]n every redistricting cycle since 1970, Texas has been found to have violated the [Voting Rights Act] with racially gerrymandered districts." Furthermore, record evidence establishes that the Department of Justice objected to at least one of Texas's statewide redistricting plans for each period between 1980 and the present, while Texas was covered by Section 5 of the Voting Rights Act. Texas "is the only state with this consistent record of objections to such statewide plans." Finally, the same Legislature that passed SB 14 also passed two laws found to be passed with discriminatory purpose.

Veasey II, at 239-40 (citations and footnotes omitted). The Court recognizes that the Fifth Circuit credits this evidence in the discriminatory purpose calculus whereas this Court had not previously done so. While this Court now also credits this evidence, the weight assigned to it is not outcome-determinative here.

Consistent with the Fifth Circuit opinion, in re-weighing this issue, the Court confirms that it does not rely on the evidence of Waller County officials' efforts to suppress minority votes and the redistricting cases for the discriminatory purpose analysis. The Court finds that reasonably contemporaneous history supports a discriminatory purpose finding.

4. Departures From Normal Practices

In part IV(A) of its prior opinion, this Court detailed the extraordinary procedural tactics used to rush SB 14 through the legislative process without the usual committee analysis, debate, and substantive consideration of amendments. *Veasey I*, at 645-53. The Fifth Circuit agreed that the Court can credit these "virtually unprecedented" radical departures from normal practices. *Veasey II*, at 238. Without setting forth the associated findings at length, this Court adopts its prior findings and conclusions with respect to the factor addressing departures from normal practices.

5. Legislative Drafting History

Proponents touted SB 14 as a remedy for voter fraud, consistent with efforts of other states. As previously demonstrated, the evidence shows a tenuous relationship between those rationales and the actual terms of the bill. "[T]he evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only

two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14's passage." *Veasey II*, at 240. The evidentiary support for SB 14 offered at trial was no better. And the bill did nothing to address mail-in balloting, which is much more vulnerable to fraud. *See generally*, *Veasey I*, at 641, 653-55.

Furthermore, the terms of the bill were unduly strict. Many categories of acceptable photo IDs permitted by other states were omitted from the Texas bill. The period of time for which IDs could be expired was shorter in SB 14. Fewer exceptions were made available. And the burdens imposed for taking advantage of an exception were heavier with SB 14. The State did not demonstrate that these features of SB 14 were necessarily consistent with its alleged interest in preventing voter fraud or increasing confidence in the electoral system. These and other similar issues were detailed by this Court in parts III(B) and IV(A)(4) of its previous opinion, along with the Appendix. *Veasey I*, at 642-45, 651-52 & Appendix.

Also evidencing the disconnect between the legislature's stated purposes and the terms of SB 14 were the constantly shifting rationales, revealed as pretext and detailed at part IV(A)(6) of the opinion. *Veasey I*, at 653-59. SB 14 was pushed through in a manner contrary to the legislature's stated prohibition against bills accompanied by a fiscal note. *Veasey I*, at 649 (part IV(A)(2)(Questionable Fiscal Note)), 651 (part IV(A)(3)(Fiscal Note, Impact Study, and Emergency)). This was due to a $27 million budget shortfall—a crisis the legislature needed to address. SB 14 added $2 million to the budget shortfall. And other pressing problems facing the legislature did not get the

procedural push that SB 14 received. So not only did SB 14 not accomplish what it was supposed to, it did accomplish that which it was not supposed to do.

The Fifth Circuit approved of the consideration of the tenuousness of the relationship between the legislature's policies and SB 14's terms. It also found the fiscal note issue relevant. And the Court is permitted to credit evidence of pretext. *Veasey II*, at 237-41. The Court thus adopts its previous findings and conclusions with respect to the legislative drafting history. *Veasey I*, at 701-02.

6. Contemporaneous statements

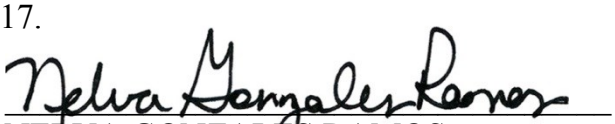
In part VI(B)(2)(Contemporaneous Statements), this Court discussed the evidence offered regarding legislator observations of the political and legislative environment at the time SB 14 was passed. *Veasey I*, at 702. The Fifth Circuit found much of this undisputed and unchallenged evidence to be infirm as speculative, not statistically significant, or not probative of legislator sentiment. *Veasey II*, at 233-34. Thus this Court assigns no weight to the evidence previously discussed, except for Senator Fraser, an author of SB 14, stating that the Voting Rights Act had outlived its useful life and the fact that the legislature failed to adopt ameliorative measures without explanation, which was shown to be out of character with sponsors of major bills. *See Veasey II*, at 236-37 (approving of the consideration of this evidence). While crediting this evidence, the Court assigns it little weight.

CONCLUSION

Because the Fifth Circuit found that some of the evidence in this case was not probative of a discriminatory purpose in the Texas Legislature's enactment of SB 14, this

Court was tasked with re-examining its conclusion on the discriminatory purpose issue. Upon reconsideration and a re-weighing of the evidence in conformity with the Fifth Circuit's opinion, the Court holds that the evidence found "infirm" did not tip the scales. Plaintiffs' probative evidence—that which was left intact after the Fifth Circuit's review—establishes that a discriminatory purpose was at least one of the substantial or motivating factors behind passage of SB 14. Consequently, the burden shifted to the State to demonstrate that the law would have been enacted without its discriminatory purpose. *Hunter*, 471 U.S. at 228. The State has not met its burden. Therefore, this Court holds, again, that SB 14 was passed with a discriminatory purpose in violation of Section 2 of the Voting Rights Act.

ORDERED this 10th day of April, 2017.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al*,	§	
	§	
Defendants.	§	

ORDER REGARDING AGREED INTERIM PLAN FOR ELECTIONS

The Court has considered the Joint Submission of Agreed Terms (D.E. 877) as revised (D.E. 893), reflecting the agreement of the parties regarding certain terms of an interim plan by which the November 8, 2016 election shall be conducted. After due consideration, the Court ORDERS Defendants Greg Abbott, in his Official Capacity as Governor of Texas; Carlos Cascos, Texas Secretary of State; State of Texas; and Steve McCraw, in his Official Capacity as Director of the Texas Department of Public Safety to abide by, and implement, the following agreed terms for the November 8, 2016 election:

1. Voters who appear on the official list of registered voters and present documentation that is acceptable photo identification under Section 63.0101 of the Texas Election Code (SB 14 ID) or SB 14 ID that has expired by no more than four years shall be permitted to vote using a regular ballot.
2. Voters who appear on the official list of registered voters and present a valid voter registration certificate, a certified birth certificate, a current utility bill, a bank statement, a government check, a paycheck, or any other government

document that displays the voter's name and address and complete and sign a reasonable impediment declaration shall be permitted to vote using a regular ballot.

3. Defendants shall use the document attached to this Order as Exhibit 1 as the English-language reasonable impediment declaration.
4. Defendants shall ensure that the reasonable impediment declaration is translated into Spanish, Chinese, and Vietnamese for use in appropriate jurisdictions. Defendants shall also inform the Elections Administrators in El Paso County and Maverick County in writing of the need to include the reasonable impediment declaration in the list of documents that need to be orally translated in accordance with Section 203 of the Voting Rights Act, 52 U.S.C. § 10503.
5. The reasonableness of a voter's impediment to obtain SB 14 ID shall not be questioned by election officials.
6. After asking a voter if he or she has SB 14 ID, election officials shall not question or challenge voters concerning the voter's lack of SB 14 ID and the voter's claimed impediment to obtaining SB 14 ID prior to allowing a voter to cast a regular ballot with a reasonable impediment declaration.
7. A signed reasonable impediment declaration shall be rejected only upon conclusive evidence that the person completing the declaration is not the person in whose name the ballot will be cast.

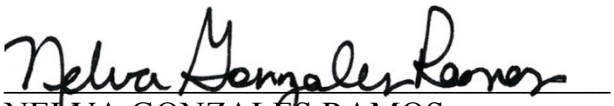
8. No identification document provided pursuant to Paragraphs 1 or 2 shall be rejected based on the fact that the address on such document does not match the address recorded in the official list of registered voters.
9. Pursuant to Section 33.058 of the Texas Election Code, poll watchers shall not be permitted to communicate in any manner with any voter concerning the procedures outlined in this Order, presentation of identification, or the validity of a voter's impediment to obtain identification.
10. Defendants shall develop a detailed voter education plan, including timetables, for the November 2016 general election by no later than August 15, 2016. This plan shall include a statement of the total planned expenditure, in an amount equal to or greater than $2,500,000.
11. Commencing with any elections held after the entry of this Order and until further order of the Court, Defendants shall continue to educate voters in subsequent elections concerning both voter identification requirements and the opportunity for voters who do not possess SB 14 ID and cannot reasonably obtain it to cast a regular ballot.
12. Defendants shall develop a detailed election official training program for the November 2016 general election by no later than August 15, 2016.
13. Defendants shall not modify the English-language reasonable impediment declaration attached to this Order as Exhibit 1 without either submission of a Notice to this Court including both a copy of the document and a statement

indicating that all Plaintiffs have consented to the modification or an order of this Court.

14. These procedures shall remain in place until further order of this Court. Nothing in this order shall prevent any party from seeking relief based on future events, including but not limited to legislative action.

These terms contemplate the formulation of a plan for educating voters and training election workers, the details of which may be addressed in one or more future orders. This is an agreed interim remedy only and the parties preserve their rights to seek or oppose future relief. The parties do not waive any arguments regarding, or forfeit their right to appellate review of, any issue not agreed upon by the parties for purposes of an interim remedy.

ORDERED this 10th day of August, 2016.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE

REASONABLE IMPEDIMENT DECLARATION

Instructions: If a voter appears on the official list of registered voters, but does not possess an acceptable form of photo identification—under Section 63.0101 of the Texas Election Code (SB 14 ID) **or** SB 14 ID that has expired by no more than four years—due to a reasonable impediment, the following steps shall be taken by the election officer to allow the voter to cast a **regular ballot**:

1. Present this form to the voter, and ask the voter to provide **one** of the following forms of identification:
    a. a valid voter registration certificate (if on Election Day, the voter registration certificate indicates that the voter is appearing at the incorrect polling place, the voter should be directed to the correct polling place);
    b. a certified birth certificate (must be an original); **or**
    c. a copy or original of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and an address (with the exception that a government document containing a photograph must be an original). **NOTE:** The address on this document is not required to match the address recorded in the official list of registered voters.
2. Ask the voter to complete this form by entering their name, and then ask them to review the "Voter's Declaration of Reasonable Impediment or Difficulty," indicate their impediment or difficulty, and sign their name.
3. Ask the voter to return the completed form to you. You may not question the voter concerning the reasonableness of any claimed impediment or the truth of the declaration. The election judge should enter the date and then sign on the space provided on the declaration.
4. Either you or the election judge should indicate on the "To Be Completed By Election Official" form what type of document the voter provided by checking the appropriate box. Either you or the election judge should fill in the Date of Election and Location fields.
5. Allow the voter to cast a **regular ballot**.

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: _____

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following

reason(s): (Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☐ Other reasonable impediment or difficulty _____

The reasonableness of your impediment or difficulty cannot be questioned.

X _____ _____

Signature of Voter Date

Sworn to and subscribed before me this

_____day of _____, 20___

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☐ Valid Voter Registration certificate; or

☐ A copy or original of **one** of the following was provided:

_____ certified birth certificate (must be an original)

_____ current utility bill

_____ bank statement

_____ government check

_____ other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____ paycheck

Location: _____

Date of Election: _____

EXHIBIT 4

Chapter 410

S.B. No. 5

AN ACT

relating to requiring a voter to present proof of identification; providing a criminal penalty and increasing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 31, Election Code, is amended by adding Section 31.013 to read as follows:

Sec. 31.013. MOBILE LOCATIONS FOR OBTAINING IDENTIFICATION. (a) The secretary of state shall establish a program using mobile units to provide election identification certificates to voters for the purpose of satisfying the requirements of Section 63.001(b). A mobile unit may be used at special events or at the request of a constituent group.

(b) In establishing the program, the secretary of state shall consult with the Department of Public Safety on the creation of the program, security relating to the issuance of an election identification certificate, best practices in issuing an election identification certificate, and equipment required to issue an election identification certificate.

(c) The secretary of state may not charge a fee to a group that requests a mobile unit established under this section.

(d) If the secretary of state cannot ensure the required security or other necessary elements of the program, the secretary of state may deny a request for a mobile unit established under this section.

(e) The secretary of state shall adopt rules necessary for the implementation of this section.

SECTION 2. Section 63.001, Election Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (c-1) and (i) to read as follows:

(b) Except as provided by Subsection (h), on offering to vote, a voter must present to an election officer at the polling place:

(1) one form of photo identification listed in [~~described by~~] Section 63.0101(a); or

(2) one form of identification listed in Section 63.0101(b) accompanied by the declaration described by Subsection (i) [~~63.0101~~].

(c-1) An election officer may not refuse to accept documentation presented to meet the requirements of Subsection (b) solely because the address on the documentation does not match the address on the list of registered voters.

(d) If, as determined under Subsection (c), the voter's name is on the precinct list of registered voters and the voter's identity can be verified from the documentation presented under Subsection (b), the voter shall be accepted for voting. An election officer may not question the reasonableness of an impediment sworn to by a voter in a declaration described by Subsection (i).

(e) On accepting a voter, an election officer shall indicate beside the voter's name on the list of registered voters that the voter is accepted for voting. If the voter executes a declaration of reasonable impediment to meet the requirement for identification

under Subsection (b), the election officer must affix the voter's voter registration number to the declaration either in numeric or bar code form.

(i) If the requirement for identification prescribed by Subsection (b)(1) is not met, an election officer shall notify the voter that the voter may be accepted for voting if the voter meets the requirement for identification prescribed by Subsection (b)(2) and executes a declaration declaring the voter has a reasonable impediment to meeting the requirement for identification prescribed by Subsection (b)(1). A person is subject to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 for a false statement or false information on the declaration. The secretary of state shall prescribe the form of the declaration. The form shall include:

(1) a notice that a person is subject to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 for a false statement or false information on the declaration;

(2) a statement that the voter swears or affirms that the information contained in the declaration is true, that the person described in the declaration is the same person appearing at the polling place to sign the declaration, and that the voter faces a reasonable impediment to procuring the identification prescribed by Subsection (b)(1);

(3) a place for the voter to indicate one of the following impediments:

(A) lack of transportation;

(B) lack of birth certificate or other documents

needed to obtain the identification prescribed by Subsection (b)(1);

(C) work schedule;

(D) lost or stolen identification;

(E) disability or illness;

(F) family responsibilities; and

(G) the identification prescribed by Subsection (b)(1) has been applied for but not received;

(4) a place for the voter to sign and date the declaration;

(5) a place for the election judge to sign and date the declaration;

(6) a place to note the polling place at which the declaration is signed; and

(7) a place for the election judge to note which form of identification prescribed by Subsection (b)(2) the voter presented.

SECTION 3. Chapter 63, Election Code, is amended by adding Section 63.0013 to read as follows:

Sec. 63.0013. FALSE STATEMENT ON DECLARATION OF REASONABLE IMPEDIMENT. (a) A person commits an offense if the person intentionally makes a false statement or provides false information on a declaration executed under Section 63.001(i).

(b) An offense under this section is a state jail felony.

SECTION 4. Section 63.004(a), Election Code, is amended to read as follows:

(a) The secretary of state may prescribe forms that combine

the poll list, the signature roster, or any other form used in connection with the acceptance of voters at polling places with each other or with the list of registered voters. The secretary shall prescribe any special instructions necessary for using the combination forms. The combination forms must include space for an election officer to indicate whether a voter executed a declaration of reasonable impediment under Section 63.001(i).

SECTION 5. Section 63.0101, Election Code, is amended to read as follows:

Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION. (a) The following documentation is an acceptable form of photo identification under this chapter:

(1) a driver's license, election identification certificate, or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation;

(2) a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation;

(3) a United States citizenship certificate issued to the person that contains the person's photograph;

(4) a United States passport book or card issued to the person that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation; or

(5) a license to carry a handgun issued to the person

by the Department of Public Safety that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation.

(b) The following documentation is acceptable as proof of identification under this chapter:

(1) a government document that shows the name and address of the voter, including the voter's voter registration certificate;

(2) one of the following documents that shows the name and address of the voter:

(A) a copy of a current utility bill;

(B) a bank statement;

(C) a government check; or

(D) a paycheck; or

(3) a certified copy of a domestic birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity.

(c) A person 70 years of age or older may use a form of identification listed in Subsection (a) that has expired for the purposes of voting if the identification is otherwise valid.

SECTION 6. Section 63.012(b), Election Code, is amended to read as follows:

(b) An offense under this section is a Class A [~~B~~] misdemeanor.

SECTION 7. Section 272.011(b), Election Code, is amended to read as follows:

(b) The secretary of state shall prepare the translation for

election materials required to be provided in a language other than English or Spanish for the following state prescribed voter forms:

(1) voter registration application form required by Section 13.002;

(2) the confirmation form required by Section 15.051;

(3) the voting instruction poster required by Section 62.011;

(4) the reasonable impediment declaration required by Section 63.001(b);

(5) the statement of residence form required by Section 63.0011;

(6) [~~(5)~~] the provisional ballot affidavit required by Section 63.011;

(7) [~~(6)~~] the application for a ballot by mail required by Section 84.011;

(8) [~~(7)~~] the carrier envelope and voting instructions required by Section 86.013; and

(9) [~~(8)~~] any other voter forms that the secretary of state identifies as frequently used and for which state resources are otherwise available.

SECTION 8. Section 521A.001(a), Transportation Code, is amended to read as follows:

(a) The department shall issue an election identification certificate to a person who states that the person is obtaining the certificate for the purpose of satisfying Section 63.001(b), Election Code, and does not have another form of identification described by Section 63.0101(a) [~~63.0101~~], Election Code, and:

(1) who is a registered voter in this state and presents a valid voter registration certificate; or

(2) who is eligible for registration under Section 13.001, Election Code, and submits a registration application to the department.

SECTION 9. This Act takes effect January 1, 2018.

S.B. No. 5

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 5 passed the Senate on March 28, 2017, by the following vote: Yeas 21, Nays 10; May 25, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2017, House granted request of the Senate; May 27, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

I hereby certify that S.B. No. 5 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 93, Nays 55, two present not voting; May 26, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 92, Nays 56, one present not voting.

Chief Clerk of the House

Approved:

5-31-2017

Date

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
2PM O'CLOCK
JUN 01 2017

Secretary of State

EXHIBIT 5

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANTS' MOTION FOR RECONSIDERATION OF DISCRIMINATORY PURPOSE RULING IN LIGHT OF SB 5'S ENACTMENT

On April 10, 2017, this Court entered its order ruling for Plaintiffs on their claim of a discriminatory purpose for SB 14, a photo-ID voting law without a reasonable-impediment exception. Docket Entry ("D.E.") 1023. On May 24, 2017, the Texas Legislature passed SB 5, which provides a reasonable-impediment procedure for voting without a photo ID and otherwise broadens the forms of ID sufficient for voting in person. Act of May 24, 2017, 85th Leg., R.S., 2017 Tex. Sess. Law. Serv. ch. 410 (Vernon's).

Defendants recognize that this Court has already held that this case would not be mooted by the expected future enactment of SB 5. D.E. 1022, at 2 (Apr. 3, 2017 order). But because this Court issued its liability ruling on the purpose claim before SB 5's enactment, and thus without considering SB 5, Defendants now respectfully request that the Court reconsider its liability ruling on that claim in light of SB 5.

ARGUMENT

This Court's discriminatory-purpose finding did not take into account subsequent legislative action by the Texas Legislature: the introduction, progression, and

ultimate enactment of SB 5, which adopted a reasonable-impediment exception virtually identical to this Court's agreed interim remedy. D.E. 1023 (purpose ruling).

The Fifth Circuit, however, instructed this Court "to *reexamine* the *discriminatory purpose claim* in accordance with the proper legal standards we have described, *bearing in mind the effect any interim legislative action taken with respect to SB 14 may have*." *Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc) (emphases added). This mandate tracks the Fifth Circuit's holding that "courts clearly defer to the legislature in the first instance to undertake remedies for violation of § 2." *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991). Thus, as the Fifth Circuit explained, "should a later Legislature again address the issue of voter identification, any new law would present a new circumstance not addressed here"—and "[a]ny concerns about a new bill would be the subject of a new appeal for another day." *Veasey*, 830 F.3d at 271.

An entity's subsequent act is "relevant to intent" behind a previous act if the subsequent act is not "remote in time." *Ansell v. Green Acres Contracting Co.*, 347 F.3d 515, 524 (3d Cir. 2003). Indeed, there would have been no reason for the Fifth Circuit to direct this Court to consider any subsequent "legislative action taken with respect to SB 14" when "reexamin[ing] the discriminatory purpose claim" if any subsequent legislative acts were irrelevant. *Veasey*, 830 F.3d at 272. Here, the Texas Legislature's adoption of SB 5's reasonable-impediment exception just a few years after adopting SB 14's photo-ID voting law confirms that the Legislature did not and does not intend to disenfranchise any voters. *See, e.g.*, *Chen v. City of Houston*, 206

F.3d 502, 521 (5th Cir. 2000) (citing *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998), "for the important point that when a plan is reenacted—as opposed to merely remaining on the books like the provision in *Hunter*—the state of mind of the reenacting body must also be considered."). In fact, the Legislature opted to enact the same type of remedy used in the agreed interim remedy (a reasonable-impediment exception), rather than the more strict indigency-affidavit procedure used by Indiana and upheld in *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181 (2008).

In assessing the issue of discriminatory purpose, this Court is required to apply a "heavy presumption of constitutionality" to SB 14 and SB 5, as legislative enactments. *U.S. Dep't of Labor v. Triplett*, 494 U.S. 715, 721 (1990). "[T]he good faith of a state legislature must be presumed," as there is a "presumption of good faith that must be accorded legislative enactments, requir[ing] courts to exercise extraordinary caution in adjudicating claims that a State has [engaged in racially-motivated action]." *Miller v. Johnson*, 515 U.S. 900, 915, 916 (1995); *accord, e.g.*, *Easley v. Cromartie*, 532 U.S. 234, 242 (2001). Application of the presumptions of constitutionality and good faith—along with the requisite extraordinary caution that these presumptions entail—prohibit finding that SB 14 was enacted with a discriminatory purpose. That is all the more true when these presumptions are applied in light of the Legislature's creation of SB 5's reasonable-impediment exception. Indeed, SB 5 completely remedies both Plaintiffs' discriminatory effect and purpose claims. *See* D.E. 1049 (Defendants' Brief on Remedies).

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court reconsider its April 10, 2017, liability ruling on the private Plaintiffs' purpose claim in light of the Legislature's intervening enactment of SB 5, and enter judgment in favor of Defendants on that claim.

Date: July 5, 2017

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant
Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Chief, General Litigation Division

MATTHEW H. FREDERICK
Deputy Solicitor General

JASON R. LAFOND
Assistant Solicitor General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-6407
Fax: (512) 474-2697

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2017, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

CERTIFICATE OF CONFERENCE

I hereby certify that Defendants counsel conferred with the plaintiffs via email on July 5, 2017 regarding the relief requested in this Motion. Counsel for the Private Plaintiffs indicated that they are opposed the relief sought in this Motion. The United States takes no position on this motion at this time.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

EXHIBIT 6

EXHIBIT A: Plaintiffs / Witnesses Alleged Burdens Addressed by SB 5

Person	Applicable Reasonable-Impediment Exception Under SB 5						
	Lack of Transportation	Lack of Birth Certificate or Related Documents	Work Schedule	Lost or Stolen Identification	Disability or Illness	Family Responsibilities	Not Yet Received ID
Barber	✓ (ROA.110750-51)	✓ (ROA.110757)			✓ (ROA.110751)		
Bates	✓ (ROA.110815)	✓ (ROA.110819-20)					
Benjamin		✓ (*Veasey*, 830 F.3d at 252-55)					
F. Carrier		✓ (*Veasey*, 830 F.3d at 254-55)			✓ (ROA.98705)		
Clark	✓ (ROA.100540)		✓ (ROA.100542)				
Eagleton	✓ (ROA.111522)	✓ (ROA.111519)					
Espinosa		✓ (ROA.111565)					
Estrada	✓ (ROA.99362)	✓ (ROA.99368)					
Gandy		✓ (ROA.99829-30)					
Gholar		✓ (ROA.111763)					
Holmes	✓ (ROA.111972)						
Mr. Lara		✓ (ROA.99838-39)					
Ms. Lara		✓ (ROA.99855)					
Martinez		✓ (ROA.112241)					
Mendez					✓ (ROA.99031)		
Taylor		✓ (ROA.99382)		✓ (ROA.99379-80)			
Washington				✓ (ROA.113106)			

Four plaintiffs and six witnesses had SB14-compliant ID at the time of trial. Benavidez Dep. 35:19-22 (ROA.110938); Bingham Dep. 37:9-10 (ROA.97456); Brickner Dep. 18:23-22:3 (ROA.111130-31); Burns Dep. 13:13-15 (ROA.114403); Jackson Dep. 30:12-32:22 (ROA.112038-40); Mellor-Crummey Dep. 14:18-15:11 (ROA.112345); Ozias Dep. 17:16-19 (ROA.112576); Sanchez Dep. 8:1-12 (ROA.112703); Trotter Dep. 51:6-55:17 (ROA.112928-29); Washington Dep. 34:3-13 (ROA.113126); *see also* Opinion 79 (Oct. 9, 2014), ECF No. 628 (ROA.27104). Under SB 5, at least two witnesses may also now vote with an expired driver's license. Espinosa Dep. 33:18-21 (ROA.111571); Trotter Dep. 35:23-36:19 (ROA.112924). Former plaintiff Michelle Bessiake—an Indiana resident who votes in Indiana—testified that she did not face a reasonable impediment to acquiring necessary ID. *See* Bessiake Dep. 83:21-84:15 (ROA.111040) ("Q: [I]s there any other reason . . . why obtaining one of those forms of identification is unduly burdensome? A. Because I don't want any of those identification."). Following this testimony, Bessiake's claims were voluntarily dismissed with prejudice. ECF No. 338 (ROA.8885-86).

EXHIBIT 7

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANTS' BRIEF ON REMEDIES

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INTRODUCTION

A reasonable-impediment-declaration procedure redresses all of plaintiffs' alleged injuries, so this Court's final remedy should simply require Texas's voter-ID law to have such a procedure. The Court should enter a final remedy (1) that requires the reasonable-impediment-declaration procedure in its August 10, 2016 agreed interim remedy to be used in Texas elections during 2017, and (2) that dissolves on January 1, 2018, when the reasonable-impediment-declaration procedure enacted by the Texas Legislature in Senate Bill 5 ("SB 5") takes effect.

This Court has now held that Senate Bill 14 ("SB 14")—a photo-ID voting requirement without a reasonable-impediment exception—has a disparate impact according to race (on account of a disparate impact according to indigency) and was enacted with a racially-discriminatory purpose.[1] The only remaining issue for the Court is on remedy. That decision must follow one basic principle: "It is well settled an injunction must be narrowly tailored to remedy the harm shown."[2] *Garrison v.*

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[1] Defendants do not concede that SB 14 has a discriminatory effect or purpose, and preserve all arguments challenging those holdings and the right to appeal them.

[2] *Accord, e.g.*, *N.E. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 698 (6th Cir. 2016) (per curiam) ("the injunctive relief was narrowly tailored to the harm identified: denial of the fundamental right to vote"); *Lytle v. U.S. Dep't of Health & Human Servs.*, 612 F. App'x 861, 862 (8th Cir. 2015) ("We note that injunctive relief must be narrowly tailored to remedy only the specific harms established by the plaintiff."); *Skydive Ariz., Inc. v. Quattrocchi*, 673 F.3d 1105, 1116 (9th Cir. 2012) ("An injunction should be 'tailored to eliminate only the specific harm alleged.'"); *State of Neb. Dep't of Health & Human Servs. v. Dep't of Health & Human Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006) ("We have long held that '[a]n injunction must be narrowly tailored to remedy the specific harm shown.'") (citations omitted); *Brooks v. Giuliani*, 84 F.3d 1454, 1467 (2d Cir. 1996) ("Injunctive relief should be 'narrowly tailored' to address specific harms") (citation omitted).

Baker Hughes Oilfield Operations, Inc., 287 F.3d 955, 962 (10th Cir. 2002) (citing *Brown v. Trs. of Boston Univ.*, 891 F.2d 337, 361 (1st Cir. 1989); *accord eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (holding that, to obtain a permanent injunction, "a plaintiff must demonstrate [] that it has suffered an irreparable injury").

Here, plaintiffs' alleged harm—for both their discriminatory effect and purpose claims—is that qualified voters are prevented from voting in person by the lack of ID acceptable under SB 14 or, at the least, suffer the burden of getting such ID to vote in person. *See* Docket Entry ("D.E.") 91, at 10-15; D.E. 88, at 11-14 (plaintiffs' standing arguments); *Veasey v. Abbott*, 830 F.3d 216, 263-64 (5th Cir. 2016) (en banc). The remedy matching that alleged harm is straightforward: A procedure that allows in-person voting without such ID upon a voter's declaration of a reasonable impediment to obtaining it.

Resisting this notion, plaintiffs argue that the remedy should be broader on their purpose challenge to SB 14 than on their results-based challenge to SB 14. D.E. 1040, at 5. But both are challenges to the same law. The irreparable harm claimed from this single law's voting requirement is the same on both theories: denial of or burden on the right to vote. That single alleged harm is fully addressed by a single procedure, one allowing in-person voting without the ID required by SB 14.

Indeed, this Court has already contemplated a single remedy on both claims. The Court's initial order on liability (which was vacated by the Fifth Circuit) ruled

for plaintiffs on both their purpose- and results-based challenges to SB 14, while simultaneously contemplating that the Legislature may "enact a different remedy"—in the singular—"for the statutory and constitutional violations." D.E. 628, at 143 (Oct. 9, 2014). A reasonable-impediment procedure is such a remedy for the harm alleged from the single challenged law.

Additionally, this Court's final remedy order should dissolve on January 1, 2018 because the recently enacted Senate Bill 5 takes effect that day and provides for a virtually identical reasonable-impediment exception. *See* Act of May 24, 2017, 85th Leg., R.S., 2017 Tex. Sess. Law Serv. ch. 410 (Vernon's) (attached as Exh. A). This Court has already acknowledged that a legislative solution must be considered. D.E. 628, at 143 (Oct. 9, 2014) (vacated initial remedy order containing a provision retaining jurisdiction to review any ameliorative legislation). And, as a matter of federalism and comity, courts must "defer to the legislature in the first instance to undertake remedies for violations of § 2." *Miss. State Ch., Operation Push, Inc. v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991); *accord Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (same for constitutional equal-protection violations).

Accordingly, the Court should enter the following final remedy, and only this remedy: "The reasonable-impediment-declaration procedure contained in this Court's August 10, 2016 agreed interim remedy, *see* D.E. 895, shall be used in Texas elections through December 31, 2017—and this remedy dissolves on January 1, 2018."

I. BACKGROUND

A. Fifth Circuit's Ruling

The Fifth Circuit affirmed this Court's ruling that SB 14 results in a discriminatory effect covered by § 2 of the Voting Rights Act ("VRA"). *Veasey*, 830 F.3d at 265. In its opinion, the Fifth Circuit explained:

> On remand, the district court should refer to the policies underlying SB 14 in fashioning a remedy. We acknowledge that the record establishes that the vast majority of eligible voters possess SB 14 ID, and we do not disturb SB 14's effect on those voters—those who have SB 14 ID must show it to vote. The remedy must be tailored to rectify only the discriminatory effect on those voters who do not have SB 14 ID or are unable to reasonably obtain such identification.

Id. at 271. And the Fifth Circuit remanded with further instructions to "ensure that any remedy enacted ameliorates SB 14's discriminatory effect, while respecting the Legislature's stated objective to safeguard the integrity of elections by requiring more secure forms of voter identification." *Id.* at 272.

The Fifth Circuit also remanded the purpose claim, as to both liability and any potential remedy, for reexamination "bearing in mind the effect any interim legislative action taken with respect to SB 14 may have." *Id.* This Court has now resolved the liability question in plaintiffs' favor, leaving for resolution the question of a remedy given the changes to the Election Code recently enacted in SB 5.

B. This Court's Agreed Interim Remedy

After the Fifth Circuit's decision, the parties agreed to an interim remedy, which this Court adopted in August 2016. *See* D.E. 877, 893, 895. The main provision of the interim remedy was the creation of a reasonable-impediment procedure that allows individuals to vote at the polls if they present a document containing their

name and address and complete a declaration that a reasonable impediment prevented them from obtaining photo ID acceptable under SB 14. *See* D.E. 895 ¶¶ 2-9, 13. The interim remedy also provided that photo ID acceptable under SB 14 could be used to satisfy the voter-ID requirement if they had expired no more than four years before voting. *See* D.E. 895 ¶ 1. And the interim remedy included provisions for educating voters and training officials. D.E. 895 ¶¶ 10-12.

C. Senate Bill 5

On May 31, 2017, the Texas Governor signed SB 5 into law. Exh. A at 5. SB 5 adds to Texas law a reasonable-impediment procedure allowing voting at the polls without photo ID acceptable under SB 14.

Specifically, SB 5 amends § 63.001 of the Election Code to require that a person seeking to vote at a polling place must present to an election officer either (1) a form of photo ID listed as acceptable in Election Code § 63.0101(a), enacted by SB 14, or (2) other specified proof of the person's name and address,[3] accompanied by a declaration of a reasonable impediment to obtaining ID acceptable under SB 14. SB 5 § 2

[3] The following documentation is acceptable as proof of identification to accompany a reasonable-impediment declaration:

(1) a government document that shows the name and address of the voter, including the voter's voter registration certificate;

(2) one of the following documents that shows the name and address of the voter:

(A) a copy of a current utility bill;

(B) a bank statement;

(C) a government check; or

(D) a paycheck; or

(3) a certified copy of a domestic birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity.

(Tex. Elec. Code § 63.001(b)). Election officers may not refuse to accept either form of documentation simply because the address on it does not match the address on the voter rolls. SB 5 § 2 (Tex. Elec. Code § 63.001(c-1)).

A reasonable-impediment declaration under SB 5 avers that the voter could not reasonably obtain the ID adequate under SB 14 because of one of seven enumerated reasons—the same reasons given in this Court's interim remedy, D.E. 895 at 6:

- lack of transportation;
- lack of birth certificate or other documents needed to get adequate photo ID;
- work schedule;
- lost or stolen ID;
- disability or illness;
- family responsibilities; or
- the voter has applied for adequate photo ID but has not received it.

SB 5 § 2 (Tex. Elec. Code § 63.001(i)(3)(A)-(G)). Because votes may not be invalidated based on the reasonableness of a claimed impediment,[4] this declaration procedure does not permit voting after merely checking an "other" box and writing something that is not an actual impediment, such as policy disagreement with the law. *See id.*

SB 5 also expands the range of expired photo ID that may be used to vote. An accepted form of photo ID may be used to verify a voter's identity for up to 4 years after its expiration, up from 60 days. *Id.* § 5 (Tex. Elec. Code § 63.0101(a)). And SB 5 provides that voters 70 years of age or older can use an accepted form of photo ID that

SB 5 § 5 (Tex. Elec. Code § 63.0101(b)).

[4] Making intentional false statements on a reasonable-impediment declaration is a state jail felony, SB 5 § 3 (Tex. Elec. Code § 63.0013), but Texas does not have a mechanism by which a vote itself can be invalidated based on a professed impediment that is false or not an actual impediment.

has been expired for any length of time. *Id.* (Tex. Elec. Code § 63.0101(c)). Voters under 70 whose photo ID is more than 4 years expired may still cast a regular ballot by using the expired ID (which is a government document) and a reasonable-impediment declaration. *Id.* (Tex. Elec. Code §§ 63.001(b), 63.0101(b)(1)).

Furthermore, SB 5 broadens the acceptable forms of photo-ID to include federally issued passport cards. *Id.* (Tex. Elec. Code § 63.0101(a)(4)). And SB 5 requires the Secretary of State to establish a program using mobile units to provide free SB 14-compliant ID election identification certificates ("EICs"), which satisfy the photo-ID requirement for in-person voting. *Id.* § 1 (Tex. Elec. Code § 31.013). Previously, mobile EIC were voluntarily provided by the State. *See* Dfdts.' Proposed Findings of Fact ¶¶ 30-31 (Nov. 18, 2016) (D.E. 966). SB 5 now requires such a program, authorizes mobile-EIC use at the request of a constituent group, and bars charging a fee to any such group requesting a mobile EIC. SB 5 § 1 (Tex. Elec. Code § 31.013).

SB 5's amendments to Texas law take effect January 1, 2018. *Id.* § 9.

II. THE PROPER REMEDY ON PLAINTIFFS' EFFECT CLAIM IS A REASONABLE-IMPEDIMENT PROCEDURE FOR VOTING WITHOUT PHOTO ID.

The parties have already agreed on a reasonable-impediment procedure as an interim remedy on plaintiffs' effect claim under VRA § 2, and that type of procedure is likewise suitable as a final remedy. *See infra* Part II.A (justifying use of a reasonable-impediment-procedure remedy). The only real dispute on the remedy for this claim appears to be whether the Legislature's enactment of such a reasonable-impediment procedure in SB 5 should be allowed to take effect—thus ending the virtually identical court-ordered remedy as of January 1, 2018. The answer is yes. *See infra*

Part II.B (explaining the validity of the Legislature's reasonable-impediment procedure).

A. A Reasonable-Impediment Procedure Is a Complete Remedy.

The disparate impact found by this Court, and affirmed by the Fifth Circuit, was based on a "burden[] [on] Texans living in poverty, *who are less likely to possess qualified photo ID, are less able to get it, and may not otherwise need it*." *Veasey*, 830 F.3d at 264 (emphasis added). Thus, the Fifth Circuit explained that an appropriate remedy for any alleged discriminatory effect "might include *a reasonable impediment* or indigency *exception* similar to those adopted, respectively, in North Carolina or Indiana." *Id.* at 270 (emphases added; footnotes omitted).

Not only has the Fifth Circuit indicated that a reasonable-impediment declaration remedies a disparate impact that allegedly violates VRA § 2's results test, but the Obama Administration's Department of Justice granted preclearance under VRA § 5 to photo-ID voting laws that included reasonable-impediment-declaration procedures. *See, e.g.*, *id.* at 279 (Higginson, J., concurring) (noting that North Carolina's reasonable-impediment accommodation was "[e]specially significant," and that a similar provision was "stressed in preclearing [South Carolina]'s voter ID law" (citing *South Carolina v. United States*, 898 F. Supp. 2d 30, 35-43 (D.D.C. 2012) (mem. op.) (three-judge court))).

As the parties agreed and this Court necessarily determined in ordering an interim remedy for the November 2016 election, the reasonable-impediment procedure for voting ordered by this Court alleviates any alleged racially disparate impact of SB 14. This procedure allows those without qualifying photo ID to vote at the polls

if they have a reasonable impediment that prevented them from obtaining an SB14-compliant ID. Accordingly, such a procedure cures any "discriminatory effect on those voters who do not have SB 14 ID or are unable to reasonably obtain such identification." *Veasey*, 830 F.3d at 271.

B. The Reasonable-Impediment Procedure of SB 5

As a matter of federalism and comity, courts must "defer to the legislature in the first instance to undertake remedies for violations of § 2." *Operation Push*, 932 F.2d at 406. As the Supreme Court has held, "appropriate" remedies under VRA § 2 must be "limited to those *necessary* to cure any constitutional or statutory defect," such that a district court "[i]s not free, and certainly [i]s not required, to disregard the political program of the Texas State Legislature." *Upham v. Seamon*, 456 U.S. 37, 43 (1982) (per curiam) (emphasis added). As the Fifth Circuit put it here: "to the extent possible, courts should respect a legislature's policy objectives when crafting a remedy." *Veasey*, 830 F.3d at 269.

The reasonable-impediment procedure added to Texas law by SB 5 is virtually identical to the agreed reasonable-impediment procedure of the interim remedy order, and SB 5 remedies any alleged disparate impact of SB 14's photo-ID requirement. SB 5 allows voting upon showing any of the seven reasonable impediments specified in the Court's interim-remedy order. *See* SB 5 § 2 (Tex. Elec. Code § 63.001(i)(3)); D.E. 895 at 6 (interim-remedy order).

In fact, Texas's voter-identification laws are now more lax than voter-identification laws in other States that also have a reasonable-impediment procedure for

voting without photo ID. That is because Texas does not have a mechanism to invalidate ballots cast using the reasonable-impediment procedure, whereas other States do. For example, in South Carolina, county boards can assess the truthfulness of the reasonable impediment asserted, and if the reason asserted is "false," "simply denigrated the [voter-ID] law," or was "nonsensical," then the vote will not count. *See South Carolina*, 898 F. Supp. 2d at 36-37 & n.5, 39, 42. But Texas does not have such a mechanism for rejecting votes cast through a reasonable-impediment procedure. Rather, all votes cast under a reasonable-impediment procedure are valid in Texas. The only enforcement mechanism for ensuring truthful statements on reasonable-impediment declarations is post-election prosecution for making a false statement on the declaration, and even that mechanism does not invalidate a cast vote.

SB 5's reasonable-impediment procedure differs from the interim-remedy procedure in one way: SB 5's reasonable-impediment procedure does not allow putative voters to submit a declaration merely checking an "other" box and making an open-ended statement, whereas the interim remedy did. But that policy choice promotes election integrity—the policy goal that the Fifth Circuit held "courts should respect," *Veasey*, 830 F.3d at 269—and does not impair SB 5's remedial effect on the alleged disparate impact of SB 14.

That policy choice promotes election integrity given Texas's experience with the November 2016 election, which proved that a reasonable-impediment procedure with an open-ended "other" box and narrative option is ripe for abuse. The legislative history of SB 5 shows that the Legislature had evidence that, during the November

2016 election in which the interim remedy was in place, various voters cast ballots using the "other" box by providing statements simply denigrating the law, rather than claiming any plausibly reasonable impediment to obtaining photo ID. *See, e.g.*, Debate on Tex. S.B. 5 on the Floor of the House, Statement of Rep. Phil King, 85th Leg., R.S., beginning at 3:38:49 (May 24, 2017), http://tlchouse.granicus.com/MediaPlayer.php?view_id=39&clip_id=14100. For example, the following explanations were given as "reasonable impediments" on declarations in the November 2016 election, none of them are actually sufficient reasonable impediments to obtaining compliant ID, yet each of these votes counted because there was and is no Texas mechanism to invalidate them:

- "Protest of Voter ID Law."
- "Don't believe I have to show picture ID."
- "Don't agree with voter ID law."
- "I do not agree with the law."
- "do not agree with law."
- "unconstitutional."
- "It's unconstitutional."
- "Unconstitutional."
- "Unconstitutional."
- "court declared photo ID requirement unconstitutional."
- "Supreme Court struck down photo ID law in Texas."
- "not required by law."
- "not law."
- "Against the law."
- "Lack of trust that this law is valid."
- "do not legally need to show Photo ID."
- "because I didn't bring it."
- "Did not want to 'pander' to government requirement."
- "Have procrastinated."

Exh. B. In light of these documented abuses of the reasonable-impediment-declaration procedure during the November 2016 election, and because Texas has no mechanism to invalidate ballots cast through a reasonable-impediment procedure, it was well within the Legislature's authority to eschew an anything-goes "other" option for voting without acceptable photo ID. SB 5 thus reflects a tweak to the November 2016 reasonable-impediment procedure given the lessons learned from demonstrated abuses under that procedure.

Plaintiffs cannot complain that Texas law will allow the denial of in-person voting to persons who legitimately face a reasonable impediment to obtaining photo ID required under SB 14, given that SB 5 now makes allowances for the same seven reasonable impediments specified in the interim remedy order. Indeed, of the named plaintiffs and testifying witnesses who lacked qualifying ID at the time of trial (as opposed to the four plaintiffs and six witnesses who had such ID), every one of them alleged a burden that corresponds to one of the SB 5 reasonable-impediment exceptions that allows voting without a photo ID. *See* Exh. C (charting the evidence). So plaintiffs have no evidence that the seven reasonable-impediment bases in SB 5 cannot cure any disparate effect of the photo-ID requirement.

III. THE PROPER REMEDY ON PLAINTIFFS' PURPOSE CLAIM IS A REASONABLE-IMPEDIMENT PROCEDURE FOR VOTING WITHOUT PHOTO ID.

Not only does a reasonable-impediment-declaration procedure remedy any discriminatory effect, but it also cures the harm from any alleged discriminatory purpose. As the Fifth Circuit explained, "should a later Legislature again address the

issue of voter identification, any new law would present a new circumstance not addressed here"—and "[a]ny concerns about a new bill would be the subject of a new appeal for another day." *Veasey*, 830 F.3d at 271. That is what has now occurred. The Legislature has chosen a different identification requirement for voting—one that no longer has what this Court found to be a prohibited discriminatory impact.

A. When Impermissible Purpose Is Found from the Restricted Nature of a Voting Standard, the Harm Is Remedied When the Legislature Replaces It with a Different Voting Standard that Does Not Prevent or Burden Voting.

The Texas Legislature has now modified the identification standards for in-person voters, to require *either* a qualifying photo ID *or* a declaration of a reasonable impediment to obtaining one. Because an injunction is prospective relief, the remedial question facing the Court is whether the harm alleged from SB 14's prior voting requirement (challenged as pretext for discrimination by race) will continue in the future under this new law that chooses a different voting requirement. The answer is no.

It is the *legislative* classification that this Court must assess in examining the harm from an asserted equal-protection violation. An equal-protection claim requires proof of a "racially discriminatory intent or purpose" for challenged state action. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). In the case of a legislative enactment, that means an institutional decision "to discriminate on the basis of race." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 260 (1979). A law that "neither says nor implies that persons are to be treated differently on account of their

race" is not a racial classification. *Crawford v. Bd. of Educ. of City of L.A.*, 458 U.S. 527, 537 (1982).

The harm from such an equal-protection violation thus results from the classification drawn *in the challenged law*, not merely the abstract existence of a legislative motive. A law is prohibited racial discrimination only if the law itself contains a "racial classification" or "a classification that is ostensibly neutral but is an obvious pretext for racial discrimination." *Feeney*, 442 U.S. at 272. As the Court held in *Feeney*: "In assessing an equal protection challenge, a court is called upon *only* to measure the basic validity of *the legislative classification*." 442 U.S. at 272 (emphases added). Or as the Court held in *Palmer v. Thompson*, 403 U.S. 217 (1971), without an invidious legislative classification of individuals, state action cannot be nullified "solely because of the motivations of the [legislators] who voted for it." *Id.* at 224.

Here, the voting classification enacted by SB 14 has now been changed by the 85th Legislature. Individuals are no longer generally stopped from voting in-person because they lack a qualifying form of photo ID; instead, voters can cast a ballot by declaring their reasonable impediment to obtaining a qualifying ID. Furthermore, SB 5 expands the range of expired photo IDs that are themselves accepted as sufficient identification. Under this newly crafted voting regime, Texas's voter-ID law cannot possibly be said to contain a legislative classification that is neutral yet serving as a pretext for racial discrimination. In fact, this new legislative classification of putative voters does not work any demonstrable harm on plaintiffs. A reasonable-impediment exception is precisely what Plaintiffs said was required.

During this entire case, Plaintiffs have never argued that *all* photo-voter-ID laws are somehow invalid or that there is anything invidious about the very nature of photo-ID laws for voter identification. That, of course, would contradict *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). *See Veasey*, 830 F.3d at 249 ("*Crawford* clearly established that states have strong interests in preventing voter fraud and increasing voter confidence by safeguarding the integrity of elections.").

Rather, plaintiffs' entire theory has been that photo-ID voting laws are invalid if they fail to accommodate voters who, for reasons of poverty, cannot reasonably comply with photo-ID requirements. In other words, even plaintiffs' theory of discriminatory purpose was not that the Legislature harbored such a purpose because it passed *any* form of a photo-ID voting law. Rather, the crux of their position was the Legislature had a discriminatory purpose because it did not enact a safeguard to let poorer individuals vote in person without photo ID—such as a reasonable-impediment declaration. *See Veasey*, 830 F.3d at 264. The enactment of a reasonable-impediment procedure for voting thus negates plaintiffs' entire claim of harm from voter-identification laws, and it eliminates any supposed pretext masking an intended burden according to race.

Plaintiffs' brief on a remedies procedure (D.E. 1040 at 5) cites cases discussing the remedy when a government made *no* subsequent ameliorative changes to a law held to effectuate a discriminatory purpose. *Cf. Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 465-66 (1982); *City of Richmond v. United States*, 422 U.S. 358, 378 (1975). Those cases cannot possibly speak to a situation like this one, where a State

has remedied the allegedly discriminatory classification by drawing a new classifications that is not discriminatory—especially one that the Fifth Circuit itself indicated would remedy any disparate impact.

In contrast, the Fifth Circuit has held that reenactment of a constitutional provision vitiates the harm from a previous law intended as racial discrimination. In *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998), the court considered an amendment to the Mississippi Constitution's felon-disenfranchisement provision, which was motivated by racial discrimination when originally enacted. The court recognized that, in *Hunter v. Underwood*, the Supreme Court held Alabama's felon-disenfranchisement provision to be unconstitutional because "its original enactment was motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect." *Id.* at 391 (quoting *Hunter v. Underwood*, 471 U.S. 222, 233 (1985)). But the Fifth Circuit held that *Hunter* "left open the possibility that by amendment, a facially neutral provision . . . might overcome its odious origin." *Id.* Despite the acknowledged discriminatory intent behind the original Mississippi provision, *Cotton* held that subsequent amendments "superseded the previous provision and removed the discriminatory taint associated with the original version." *Id.*

Cotton distinguished *Hunter* on the ground that the Alabama provision was amended only involuntarily through judicial invalidation, whereas Mississippi voluntarily amended its own provision. *See id.* at 391 n.8; *cf.* D.E. 1010, at 4 (plaintiffs' argument citing *Hunter* as "declining to take into account later ameliorative changes to a discriminatory law"). *Cotton* explained that the statute "as it presently exists is

unconstitutional only if the amendments were adopted out of a desire to discriminate." 157 F.3d at 392. And in *Chen v. City of Houston*, the Fifth Circuit cited *Cotton* "for the important point that when a plan is reenacted—as opposed to merely remaining on the books like the provision in *Hunter*—the state of mind of the reenacting body must also be considered." 206 F.3d 502, 521 (5th Cir. 2000); *see also Ansell v. Green Acres Contracting Co.*, 347 F.3d 515, 524 (3d Cir. 2003) (holding, in an employment-discrimination case, that an employer's subsequent acts "may still be relevant to intent" if the acts are not "remote in time"). Likewise, the Supreme Court has recognized: "Subsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction." *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 380-81 (1969).

B. None of the Cases Upon Which Plaintiffs Rely Involved Ameliorative Changes to Laws, Eliminating All of the Alleged Injuries.

Now, plaintiffs have now turned to tarnishing the Legislature's motives for enacting exactly what plaintiffs believed the law required. But the passage of SB 5 involved no "gamesmanship." Plaintiffs pretend that the Legislature's enactment of SB 5 is the equivalent of jurisdictions cycling through various forms of discriminatory measures, adopting a new discriminatory measure each time a court declared an older discriminatory measure invalid. *Cf. South Carolina v. Katzenbach*, 383 U.S. 301, 335 (1966) (describing the "extraordinary stratagem" of certain States in the 1960s "of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees").

This is absurd. The passage of SB 5 was not "switch[ing] to discriminatory devices not covered by the federal decrees." *Id.* at 314. SB 5 is an *ameliorative* change. Its reasonable-impediment procedure is the precise ameliorative provision that (1) plaintiffs have sought all along in this litigation, (2) the Obama Administration's DOJ has precleared under VRA § 5 in other States, and (3) the Fifth Circuit here suggested as "appropriate amendments" to remedy any discriminatory effect of SB 14, *Veasey*, 830 F.3d at 270. The Legislature's adoption of a reasonable-impediment procedure is the complete opposite of the "unremitting and ingenious defiance" that would continue the harm from an original racial classification. *South Carolina*, 383 U.S. at 309.

Various cases that plaintiffs have previously relied on are thus wildly inapposite, as none of them involved *ameliorative* changes to laws that eliminated all of the alleged injuries. *Louisiana v. United States* involved Louisiana cycling from a grandfather clause, to an interpretation test with a white-primary law, to a "Segregation Committee," to a wholesale purge of black voters from the voter rolls, to a registration test that gave registrars complete discretion to prevent black citizens from voting, to a new citizenship test—none of these provisions being ameliorative in the slightest. 380 U.S. 145, 149 (1965). *Green v. County School Board* involved a challenge to a county's segregated school system in 1965, 391 U.S. 430, 437-39 (1968)—despite the Supreme Court's express command ten years earlier "to effectuate a transition to a racially nondiscriminatory school system," *Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294, 301 (1955). And *Cowan v. Cleveland School District* was another school desegregation case first filed in 1965. 748 F.3d 233, 235 (5th Cir. 2014).

With the enactment of SB 5, there are no "lingering effects" of any injuries to plaintiffs from the classification in SB 14 found infirm by this Court—certainly no lingering effects that qualify as irreparable harm for which remedy is an injunction of Texas's voter-identification procedures as supplemented by SB 5 (or the equivalent procedure in the Court's interim remedy order). Plaintiffs cannot identify evidence of a single voter who will be prevented from voting under SB 5's reasonable-impediment procedure. That is the best evidence that prospective relief enjoining SB 5's reasonable-impediment procedure would be grossly inappropriate.

IV. PLAINTIFFS' REQUEST FOR VRA PRECLEARANCE BAIL-IN IS MERITLESS, BUT WILL BE ADDRESSED SEPARATELY PER THE COURT'S ORDER

Pursuant to this Court's order of June 20, 2017, plaintiffs' meritless request for a preclearance bail-in remedy under VRA § 3 will be briefed separately at a later date. *See* D.E. 1044, at 2.

CONCLUSION

For the reasons stated above, Defendants respectfully submit that the following remedy, and only this remedy, is appropriate under this Court's liability rulings: "The reasonable-impediment-declaration procedure contained in this Court's August 10, 2016 agreed interim remedy, *see* D.E. 895, shall be used in Texas elections through December 31, 2017—and this remedy dissolves on January 1, 2018."

Date: July 5, 2017

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant
Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Chief, General Litigation Division

MATTHEW H. FREDERICK
Deputy Solicitor General

JASON R. LAFOND
Assistant Solicitor General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-6407
Fax: (512) 474-2697

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2017, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

CERTIFICATE OF COMPLIANCE

I hereby certify that this opening brief does not exceed 25 pages, the page limit established by this Court's June 20, 2017 order on procedure for addressing remedies.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

EXHIBIT

A

S.B. No. 5

AN ACT

relating to requiring a voter to present proof of identification; providing a criminal penalty and increasing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 31, Election Code, is amended by adding Section 31.013 to read as follows:

Sec. 31.013. MOBILE LOCATIONS FOR OBTAINING IDENTIFICATION. (a) The secretary of state shall establish a program using mobile units to provide election identification certificates to voters for the purpose of satisfying the requirements of Section 63.001(b). A mobile unit may be used at special events or at the request of a constituent group.

(b) In establishing the program, the secretary of state shall consult with the Department of Public Safety on the creation of the program, security relating to the issuance of an election identification certificate, best practices in issuing an election identification certificate, and equipment required to issue an election identification certificate.

(c) The secretary of state may not charge a fee to a group that requests a mobile unit established under this section.

(d) If the secretary of state cannot ensure the required security or other necessary elements of the program, the secretary of state may deny a request for a mobile unit established under this section.

(e) The secretary of state shall adopt rules necessary for the implementation of this section.

SECTION 2. Section 63.001, Election Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (c-1) and (i) to read as follows:

(b) Except as provided by Subsection (h), on offering to vote, a voter must present to an election officer at the polling place:

(1) one form of photo identification listed in [~~described by~~] Section 63.0101(a); or

(2) one form of identification listed in Section 63.0101(b) accompanied by the declaration described by Subsection (i) [~~63.0101~~].

(c-1) An election officer may not refuse to accept documentation presented to meet the requirements of Subsection (b) solely because the address on the documentation does not match the address on the list of registered voters.

(d) If, as determined under Subsection (c), the voter's name is on the precinct list of registered voters and the voter's identity can be verified from the documentation presented under Subsection (b), the voter shall be accepted for voting. An election officer may not question the reasonableness of an impediment sworn to by a voter in a declaration described by Subsection (i).

(e) On accepting a voter, an election officer shall indicate beside the voter's name on the list of registered voters that the voter is accepted for voting. If the voter executes a declaration of reasonable impediment to meet the requirement for identification

under Subsection (b), the election officer must affix the voter's voter registration number to the declaration either in numeric or bar code form.

(i) If the requirement for identification prescribed by Subsection (b)(1) is not met, an election officer shall notify the voter that the voter may be accepted for voting if the voter meets the requirement for identification prescribed by Subsection (b)(2) and executes a declaration declaring the voter has a reasonable impediment to meeting the requirement for identification prescribed by Subsection (b)(1). A person is subject to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 for a false statement or false information on the declaration. The secretary of state shall prescribe the form of the declaration. The form shall include:

(1) a notice that a person is subject to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 for a false statement or false information on the declaration;

(2) a statement that the voter swears or affirms that the information contained in the declaration is true, that the person described in the declaration is the same person appearing at the polling place to sign the declaration, and that the voter faces a reasonable impediment to procuring the identification prescribed by Subsection (b)(1);

(3) a place for the voter to indicate one of the following impediments:

(A) lack of transportation;

(B) lack of birth certificate or other documents

needed to obtain the identification prescribed by Subsection (b)(1);

(C) work schedule;

(D) lost or stolen identification;

(E) disability or illness;

(F) family responsibilities; and

(G) the identification prescribed by Subsection (b)(1) has been applied for but not received;

(4) a place for the voter to sign and date the declaration;

(5) a place for the election judge to sign and date the declaration;

(6) a place to note the polling place at which the declaration is signed; and

(7) a place for the election judge to note which form of identification prescribed by Subsection (b)(2) the voter presented.

SECTION 3. Chapter 63, Election Code, is amended by adding Section 63.0013 to read as follows:

Sec. 63.0013. FALSE STATEMENT ON DECLARATION OF REASONABLE IMPEDIMENT. (a) A person commits an offense if the person intentionally makes a false statement or provides false information on a declaration executed under Section 63.001(i).

(b) An offense under this section is a state jail felony.

SECTION 4. Section 63.004(a), Election Code, is amended to read as follows:

(a) The secretary of state may prescribe forms that combine

the poll list, the signature roster, or any other form used in connection with the acceptance of voters at polling places with each other or with the list of registered voters. The secretary shall prescribe any special instructions necessary for using the combination forms. The combination forms must include space for an election officer to indicate whether a voter executed a declaration of reasonable impediment under Section 63.001(i).

SECTION 5. Section 63.0101, Election Code, is amended to read as follows:

Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION. (a) The following documentation is an acceptable form of photo identification under this chapter:

(1) a driver's license, election identification certificate, or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation;

(2) a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation;

(3) a United States citizenship certificate issued to the person that contains the person's photograph;

(4) a United States passport book or card issued to the person that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation; or

(5) a license to carry a handgun issued to the person

by the Department of Public Safety that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation.

(b) The following documentation is acceptable as proof of identification under this chapter:

(1) a government document that shows the name and address of the voter, including the voter's voter registration certificate;

(2) one of the following documents that shows the name and address of the voter:

(A) a copy of a current utility bill;

(B) a bank statement;

(C) a government check; or

(D) a paycheck; or

(3) a certified copy of a domestic birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity.

(c) A person 70 years of age or older may use a form of identification listed in Subsection (a) that has expired for the purposes of voting if the identification is otherwise valid.

SECTION 6. Section 63.012(b), Election Code, is amended to read as follows:

(b) An offense under this section is a Class A [~~B~~] misdemeanor.

SECTION 7. Section 272.011(b), Election Code, is amended to read as follows:

(b) The secretary of state shall prepare the translation for

election materials required to be provided in a language other than English or Spanish for the following state prescribed voter forms:

(1) voter registration application form required by Section 13.002;

(2) the confirmation form required by Section 15.051;

(3) the voting instruction poster required by Section 62.011;

(4) the reasonable impediment declaration required by Section 63.001(b);

(5) the statement of residence form required by Section 63.0011;

(6) [~~(5)~~] the provisional ballot affidavit required by Section 63.011;

(7) [~~(6)~~] the application for a ballot by mail required by Section 84.011;

(8) [~~(7)~~] the carrier envelope and voting instructions required by Section 86.013; and

(9) [~~(8)~~] any other voter forms that the secretary of state identifies as frequently used and for which state resources are otherwise available.

SECTION 8. Section 521A.001(a), Transportation Code, is amended to read as follows:

(a) The department shall issue an election identification certificate to a person who states that the person is obtaining the certificate for the purpose of satisfying Section 63.001(b), Election Code, and does not have another form of identification described by Section 63.0101(a) [~~63.0101~~], Election Code, and:

(1) who is a registered voter in this state and presents a valid voter registration certificate; or

(2) who is eligible for registration under Section 13.001, Election Code, and submits a registration application to the department.

SECTION 9. This Act takes effect January 1, 2018.

S.B. No. 5

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 5 passed the Senate on March 28, 2017, by the following vote: Yeas 21, Nays 10; May 25, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2017, House granted request of the Senate; May 27, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

I hereby certify that S.B. No. 5 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 93, Nays 55, two present not voting; May 26, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 92, Nays 56, one present not voting.

Chief Clerk of the House

Approved:

5-31-2017
Date

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
2PM O'CLOCK
JUN 01 2017
Secretary of State

EXHIBIT

B

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty Protest of Voter ID Law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

Oct 25, 2016
Date

Sworn to and subscribed before me this

25 day of Oct, 2016

Presiding Judge Michael Handley

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Carpenter Park

Date of Election: 10-25-2016

RECEIVED OCT 28 2016

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name (*Nombre*): [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) (*Elija **al menos una** de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiares*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
	Other reasonable impediment or difficulty: Don't believe I have to show Picture ID *Otro impedimento o dificultad razonable* _____		

[redacted] **The reasonableness of your impediment or difficulty cannot be questioned.**
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted]
(Firma del elector)

10/29/16
Date (*Fecha*)

Sworn to and subscribed before me this 29 day of Oct, 20 16 Presiding Judge Lee Pan

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

✓	Valid Voter Registration certificate; or
	A copy or original of **one** of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
	paycheck

Location: SRD 134 M-1

Date of Election: 11/8/16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Print Name Legibly: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

___ Lack of transportation
___ Lack of birth certificate or other documents needed to obtain acceptable photo ID
___ Work schedule
___ Lost or stolen photo ID
___ Disability or illness
___ Family responsibilities
___ Photo ID applied for but not received
___ Other reasonable impediment or difficulty Don't agree with voter ID law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] **Date:** 10/28/2016
Signature of Voter

Sworn to and subscribed before me this:
28th day of Oct, 2016

Presiding Judge or Alternate Judge:

RAUL Solis
Print Name

X [signature]
Signature

To be completed by Election Official:

The voter provided one of the following forms of identification or information:
☐ Valid Voter Registration Certificate; or
☐ A copy or original of one of the following was provided:
___ Certified Birth Certificate (must be an original)
___ Current utility bill
___ Bank statement
___ Government check
___ Other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
___ Paycheck

Early Voting Station: _____ Date of Election: ___/___/20___

RETURN INSIDE DAILY FOLDER

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Print Name Legibly: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

___ Lack of transportation
___ Lack of birth certificate or other documents needed to obtain acceptable photo ID
___ Work schedule
___ Lost or stolen photo ID
___ Disability or illness
___ Family responsibilities
___ Photo ID applied for but not received
X Other reasonable impediment or difficulty I do not agree with the law.

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] Date: ___/___/20___

Signature of Voter

Sworn to and subscribed before me this:

4th day of Nov, 2016

Presiding Judge or Alternate Judge:

Raul Solis-Anaya X [signature]

Print Name Signature

To be completed by Election Official:

The voter provided one of the following forms of identification or information:
☐ Valid Voter Registration Certificate; or
☐ A copy or original of one of the following was provided:
___ Certified Birth Certificate (must be an original)
___ Current utility bill
___ Bank statement
___ Government check
___ Other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
___ Paycheck

Early Voting Station: _____ Date of Election: ___/___/20___

RETURN INSIDE DAILY FOLDER

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty do not agree with law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

10/28/2016
Date

Sworn to and subscribed before me this

28 day of Oct, 2016

Presiding Judge Janet L Lueck

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☒ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

11/4/2016
Date

Sworn to and subscribed before me this

4 day of Nov, 2016

Presiding Judge

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☐ Valid Voter Registration certificate; or

☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: _____

Date of Election: _____

11-04-16
26-Millennium TEAM 2

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty It's unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

11/4/16
Date

Sworn to and subscribed before me this
4th day of Nov., 2016

Presiding Judge [signature]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☐ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:
  - _____certified birth certificate (must be an original)
  - _____current utility bill
  - _____bank statement
  - _____government check
  - _____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
  - _____paycheck

Location: 26-Millennium YC

Date of Election: 11-08-16

1140528682 CUNNINGHAM, DONNA
2618 CARLOW DR
AUSTIN 344A

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty Unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 11-4-16
Date

Sworn to and subscribed before me this

4 day of Nov, 20 16

Presiding Judge Lydia P. Stewart

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Randalls Ben White

Date of Election: 11.4.2016

11.8.2016

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty Unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

10/26/2016
Date

Sworn to and subscribed before me this
26th day of Oct, 20 16

Presiding Judge Beverly Wendulin

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty Court declared photo ID requirement unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 28 October 2016

Signature of Voter Date

Sworn to and subscribed before me this

28 day of 10, 20

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:
  - _____certified birth certificate (must be an original)
  - _____current utility bill
  - _____bank statement
  - _____government check
  - _____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
  - _____paycheck

Location: EV

Date of Election: NOV 8, 16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty SUPREME COURT STRUCK DOWN PHOTO ID LAW IN TEXAS

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

7 NOVEMBER 2016
Date

Sworn to and subscribed before me this

6 day of NOV, 2016

Presiding Judge [signature]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☒ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:
  - _____certified birth certificate (must be an original)
  - _____current utility bill
  - _____bank statement
  - _____government check
  - _____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
  - _____paycheck

Location: 301, 315

Date of Election: 11·8·16

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name *(Nombre)*: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) (*Elija **al menos una** de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiars*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
✓	Other reasonable impediment or difficulty not required by law *Otro impedimento o dificultad razonable* _____		

The reasonableness of your impediment or difficulty cannot be questioned.
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted]
Signature of Voter *(Firma del elector)*

11/4/16
Date *(Fecha)*

Sworn to and subscribed before me this 4 day of Nov, 20 16 Presiding Judge Annie Goodrich

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

✓	Valid Voter Registration certificate; or
	A copy or original of **one** of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
	paycheck

Location: SRD001 0000008 Date of Election: 11-8-16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty not law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

[redacted] 10/3/16
Date

Sworn to and subscribed before me this

____ day of _____, 20

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☐ Valid Voter Registration certificate; or

☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: _____

Date of Election: _____

REASONABLE IMPEDIMENT DECLARATION

[redacted]D BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

☐ Lack of transportation ☐ Disability or illness

☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID

☐ Work schedule ☐ Family responsibilities

☐ Lost or stolen photo ID ☐ Photo ID applied for but not received

☒ Other reasonable impediment or difficulty AGAINST THE LAW

[redacted]e questioned.

X [redacted] 10/28/2016

Signature of Voter Date

Sworn to and subscribed before me this

____ day of _____, 20

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☒ Valid Voter Registration certificate; or

☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: _____

Date of Election: _____

MLK 10.26.16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty Lack of TRUST That This LAW IS VALID,

The reasonableness of your impediment or difficulty cannot be questioned.

[redacted]
Signature of Voter

10/26/16
Date

Sworn to and subscribed before me this

26 day of 10 20

Presiding Judge Mary Dora Bolson

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Martin L. Kings

Date of Election: 10-26-16

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name (*Nombre*): [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) (*Elija **al menos una** de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiares*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
✓	Other reasonable impediment or difficulty do not legally need to show Photo ID *Otro impedimento o dificultad razonable* _____		

The reasonableness of your impediment or difficulty cannot be questioned.
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted]
Signature of Voter *(Firma del elector)*

10/29/2016
Date *(Fecha)*

Sworn to and subscribed before me this 29 day of Oct, 2016 Presiding Judge Lee [signature]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

✓	Valid Voter Registration certificate; or
	A copy or original of **one** of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
	paycheck

Location: SRD 134 M-1

Date of Election: 11/8/16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty because I didn't bring it.

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 10/26/2016

Signature of Voter — Date

Sworn to and subscribed before me this

26 day of Oct, 2016

Presiding Judge [signature]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☒ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: FB ISD Mail

Date of Election: 26 Oct 16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty: Did Not want to "pander" to government requirement

The reasonableness of your impediment or difficulty may be questioned.

[redacted] 10-24-16

Signature of Voter Date

Sworn to and subscribed before me this

24 day of Oct, 2016

Presiding Judge Dickie Lyle

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Mercedes Civic Center

Date of Election: Nov. 8, 2016

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name (*Nombre*): [redacted] [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) (*Elija **al menos una** de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiars*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
✓	Other reasonable impediment or difficulty HAVE PROCRASTINATED *Otro impedimento o dificultad razonable* _____		

The reasonableness of your impediment or difficulty cannot be questioned.
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted] 10-29-2016

Signature of Voter (*Firma del elector*) Date (*Fecha*)

Sworn to and subscribed before me this 29 day of Oct 20 16 Presiding Judge Annie Rodriguez

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

	Valid Voter Registration certificate; or
	A copy or original of **one** of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
✓	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original) [redacted] DL
	paycheck

Location: SRO 001 Date of Election: 11-8-16

0000066

EXHIBIT

C

EXHIBIT A: Plaintiffs / Witnesses Alleged Burdens Addressed by SB 5

Person	Applicable Reasonable-Impediment Exception Under SB 5						
	Lack of Transportation	Lack of Birth Certificate or Related Documents	Work Schedule	Lost or Stolen Identification	Disability or Illness	Family Responsibilities	Not Yet Received ID
Barber	✓ (ROA.110750-51)	✓ (ROA.110757)			✓ (ROA.110751)		
Bates	✓ (ROA.110815)	✓ (ROA.110819-20)					
Benjamin		✓ (*Veasey*, 830 F.3d at 252-55)					
F. Carrier		✓ (*Veasey*, 830 F.3d at 254-55)			✓ (ROA.98705)		
Clark	✓ (ROA.100540)		✓ (ROA.100542)				
Eagleton	✓ (ROA.111522)	✓ (ROA.111519)					
Espinosa		✓ (ROA.111565)					
Estrada	✓ (ROA.99362)	✓ (ROA.99368)					
Gandy		✓ (ROA.99829-30)					
Gholar		✓ (ROA.111763)					
Holmes	✓ (ROA.111972)						
Mr. Lara		✓ (ROA.99838-39)					
Ms. Lara		✓ (ROA.99855)					
Martinez		✓ (ROA.112241)					
Mendez					✓ (ROA.99031)		
Taylor		✓ (ROA.99382)		✓ (ROA.99379-80)			
Washington				✓ (ROA.113106)			

Four plaintiffs and six witnesses had SB14-compliant ID at the time of trial. Benavidez Dep. 35:19-22 (ROA.110938); Bingham Dep. 37:9-10 (ROA.97456); Brickner Dep. 18:23-22:3 (ROA.111130-31); Burns Dep. 13:13-15 (ROA.114403); Jackson Dep. 30:12-32:22 (ROA.112038-40); Mellor-Crummey Dep. 14:18-15:11 (ROA.112345); Ozias Dep. 17:16-19 (ROA.112576); Sanchez Dep. 8:1-12 (ROA.112703); Trotter Dep. 51:6-55:17 (ROA.112928-29); Washington Dep. 34:3-13 (ROA.113126); *see also* Opinion 79 (Oct. 9, 2014), ECF No. 628 (ROA.27104). Under SB 5, at least two witnesses may also now vote with an expired driver's license. Espinosa Dep. 33:18-21 (ROA.111571); Trotter Dep. 35:23-36:19 (ROA.112924). Former plaintiff Michelle Bessiake—an Indiana resident who votes in Indiana—testified that she did not face a reasonable impediment to acquiring necessary ID. *See* Bessiake Dep. 83:21-84:15 (ROA.111040) ("Q: [I]s there any other reason . . . why obtaining one of those forms of identification is unduly burdensome? A. Because I don't want any of those identification."). Following this testimony, Bessiake's claims were voluntarily dismissed with prejudice. ECF No. 338 (ROA.8885-86).

EXHIBIT 8

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANTS' RESPONSE BRIEF ON REMEDIES

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Cases

Statutes

Other Authorities

ARGUMENT

I. THERE IS NO RECORD EVIDENCE OF—AND PLAINTIFFS DO NOT EVEN TRY TO IDENTIFY—A SINGLE TEXAS VOTER WHO LACKS AN SB 14-COMPLIANT ID AND FACES A BURDEN NOT COVERED BY SB 5'S REASONABLE-IMPEDIMENT EXCEPTION, SO SB 5 WHOLLY CURES ANY DISCRIMINATORY EFFECT.

The record does not show that even a single voter will face any material burden in voting under SB 5's[1] reasonable-impediment exception to SB 14's photo-ID requirement. Plaintiffs' remedies briefing does not attempt to identify such a voter, nor could plaintiffs have done so. As defendants explained in their opening remedies brief and demonstrated in Exhibit C to that brief, all of the burdens alleged by the named plaintiffs and their testifying witnesses are covered by (five of) the seven reasonable impediments listed in SB 5. Docket Entry (D.E.) 1049 (defendants' brief) & 1049-3 (Exh. C).

Thus, no record evidence allows concluding that any Texas voter will face a material burden to vote after SB 5—much less that any such voter is a minority. *Cf.* D.E. 1051 at 16 n.10 (private plaintiffs' baseless speculation to this effect). As defendants' Exhibit C confirms, the burdens alleged by plaintiffs have been cured by SB 5's reasonable-impediment exception.[2] In no way does Texas's voter-ID law under SB 5 "perpetuate[] an existent denial of access by the racial minority to the political process" or "visit disparate burdens on minority voters." *Id.* at 4, 6.

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[1] SB 5, Act of May 28, 2017, 85th Leg., R.S., ch. 410, effective January 1, 2018.

[2] As Exhibit C shows, the record here is starkly different than in *North Carolina State Conference of NAACP v. McCrory*. 831 F.3d 204, 240 (4th Cir. 2016), where nothing showed "that the reasonable impediment exception ensures that the photo ID law no longer imposes any lingering burden on African American voters."

II. SB 5's Reasonable-Impediment Exception Mirrors the Reasonable-Impediment Exception in this Court's Agreed Interim Remedy, and any Differences Between the Two Do Not Perpetuate any Discriminatory Effect.

SB 5's reasonable-impediment exception is virtually identical to the reasonable-impediment exception of this Court's agreed interim remedy. SB 5 does not merely have "surface similarities" to the interim remedy. *Id.* at 5; *see id.* at 15-17.

A. Both totally excuse the photo-ID requirement. SB 5, just like the interim remedy, *totally excuses* the photo-ID voting requirement for individuals with a reasonable impediment to obtaining sufficient photo ID.

It is absurd for plaintiffs to suggest that SB 5 "fails specifically to remove or meaningfully modify *any* of the offending voter identification provisions of SB 14." *Id.* at 4-5. SB 14's photo-ID voting requirement is wholly waived under SB 5 for those with a reasonable impediment to getting SB 14-compliant ID. That is indeed a "meaningful[]" modification of SB 14, *cf. id.* at 4—which perhaps explains why it is part of the interim remedy.

It is true that SB 5 expanded the list of compliant photo IDs to also include federal passport cards and SB 14-compliant IDs that expired within the past 4 years, up from 60 days. *Id.* at 5, 11, 13 & n.6. But SB 5 separately provides a *complete waiver* of the photo-ID requirement for voters with a reasonable impediment to getting it. Voters with a reasonable impediment simply do not need a photo ID to vote in Texas under SB 5, so whatever "picking and choosing of acceptable IDs" that occurred in SB 14 no longer presents any obstacle to voting for those with a reasonable impediment. *Cf. id.* at 11. Plaintiffs repeatedly ignore this crucial fact.

B. Both require completion of a form. SB 5, just like the interim remedy, requires voters to complete a form—a reasonable-impediment declaration—to use the reasonable-impediment exception. Plaintiffs' brief does not allege—and no record evidence substantiates—any burden with merely having to fill out a piece of paper to vote.

C. Both include seven expressly enumerated reasonable impediments. SB 5, just like the interim remedy, contains seven enumerated reasonable impediments that necessarily satisfy its exception. *See* D.E. 1049 at 6.

It is true that SB 5's reasonable-impediment declaration does not contain an additional "other" box with an open-ended blank space for a voter to write anything they wish—whereas the interim remedy did. D.E. 1051 at 15. But plaintiffs do not allege that any of the 14 named individual plaintiffs, any of their 13 voter witnesses, or any other individual Texas voter cannot vote under SB 5's reasonable-impediment exception. Instead, plaintiffs assert in a footnote—without any citation or record evidence—that "[b]y removing the 'other' box . . . , Texas is unnecessarily foreclosing voters with impediments other than those listed—who are disproportionately Latino and Black voters—from using the [reasonable-impediment] process." *Id.* at 16 n.10.

First, this change was not "unnecessar[y]." *Id.* The Legislature had a very good reason for eliminating the "other" box: its abuse during the November 2016 election. Defendants documented this at length.[3] D.E. 1049 at 10-12; D.E. 1049-2 (Exh. B).

[3] Plaintiffs do not allege that SB 5—or its omission of an "other" box option—was enacted with a discriminatory purpose, as they *concede* that SB 5 is "remedial legislation." D.E. 1051 at 10. Defendants presented legislative history and examples of the

Regardless, plaintiffs have not pointed to any record evidence of even a single Texas voter who would have a reasonable impediment that is not covered by one of the seven grounds enumerated in SB 5 (and this Court's agreed interim remedy). Furthermore, even if such additional reasonable impediments existed—and there is no basis in or outside the record to conclude that they do—there is no evidence that these additional speculative impediments would be disproportionately borne by minority voters, which is this Court's basis for finding a discriminatory effect.

D. Both require a non-photo supporting document. SB 5, just like the interim remedy, requires voters to provide one supporting document with their name and address while using the reasonable-impediment exception. SB 5 even provides that the document cannot be rejected because the address on it does not match the address on the list of registered voters. SB 5 § 2 (new Tex. Elec. Code § 63.001(c-1)).

This requirement cannot possibly be an unlawful burden on voting. Even pre-SB 14 law required voters to show their voter-registration card. Tex. Elec. Code § 63.001(b) (2010). And that equally suffices under SB 5's reasonable-impediment exception: a voter-registration card is an acceptable supporting document. SB 5 *expands* the types of supporting documents to include others as well; in fact, SB 5 allows more documents than even the interim remedy, which did not allow a *copy* of a birth certificate (as SB 5 does). *Compare* SB § 5 (new Tex. Elec. Code § 61.0101(b)(3)) (allowing

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abuses of the "other" box on the November 2016 interim remedy reasonable-impediment to show that SB 5—and its decision to omit the "other" box—was not enacted with a discriminatory purpose.

copy of birth certificate), *with* D.E. 895 at 7 (birth certificate "must be an original").[4] In any event, plaintiffs themselves say that a requirement to show a voter-registration card does not perpetuate any discriminatory effect. D.E. 1051 at 13-14.[5]

E. Both allow the same degree of prosecution for intentionally making a false statement on the declaration. SB 5, just like the interim remedy, requires voters to swear or affirm under penalty of perjury on a government form that they do in fact have a reasonable impediment preventing them from obtaining compliant photo-ID.

Thus, even under this Court's agreed interim remedy, the State could prosecute individuals—to the same extent allowed by SB 5—for making false statements on reasonable-impediment declarations. SB 5 confirms the penalties for making a

[4] SB 5's supporting documents otherwise track the interim remedy: (1) "a government document," such as a voter-registration certificate; (2) "a copy of a current utility bill," "a bank statement," "a government check," or "a paycheck"; or (3) "a certified copy of a domestic birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity." SB 5 § 5(b) (new Tex. Elec. Code § 63.0101(b)). Plaintiffs complain that "SB 5 allows only 'domestic' birth certificates." D.E. 1051 at 15. But that is not true. SB 5 also permits "other document[s] confirming birth that [are] admissible in a court of law," which would include foreign birth certificates. SB 5 § 5 (new Tex. Elec. Code § 63.0101(b)(3)); *e.g.*, *United States v. Deverso*, 518 F.3d 1250, 1254-56 (11th Cir. 2008); *United States v. Montemayor*, 712 F.2d 104, 109 (5th Cir. 1983) (admitting foreign birth certificates). Regardless, plaintiffs do not even argue that any Texas voter who has a reasonable impediment lacks not only a domestic birth certificate but any of the wide array of supporting documents allowed by SB 5 (and this Court's interim remedy), such as a voter registration card.

[5] Plaintiffs' own argument thus refutes any alleged burden from having to show a supporting document to use the reasonable-impediment exception. Plaintiffs' position is that any discriminatory effect is eliminated by allowing voter-registration cards to be used as compliant IDs themselves. *Id.* at 13-14. SB 5 and the interim remedy both permit voter-registration cards as a supporting document sufficient to use the reasonable-impediment exception. So, even under plaintiffs' view, the need to show a supporting document cannot possibly create any discriminatory results.

false statement on a reasonable-impediment declaration that were already provided by preexisting Texas law. SB 5 provides: "A person is subject to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 for a false statement or false information on the declaration." SB 5 § 2 (new Tex. Elec. Code § 63.001(i)). SB 5 requires the reasonable-impediment-declaration form to provide express notice of these crimes. *Id.* § 2 (new Tex. Elec. Code § 63.001(i)(1)).

Importantly, just like perjury, *see* Tex. Penal Code § 37.02(a), § 63.0013's crime for making a false statement on a reasonable-impediment declaration requires *intent*: "A person commits an offense if the person intentionally makes a false statement or provides false information on a declaration executed under Section 63.001(i)." SB 5 § 3 (new Tex. Elec. Code § 63.0013(a)). Section 63.0013's offense is a "state jail felony."[6] *Id.* (new Tex. Elec. Code § 63.0013(b)). Section 63.0013 thus confirms what Texas law already provided before SB 5: Individuals who *intentionally* make a false entry on a government form (including a reasonable-impediment declaration) can be prosecuted for a state jail felony.[7]

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[6] State jail felonies for making a false statement on a reasonable-impediment declaration are punishable by jail for 180 days to 2 years and an optional fine up to $10,000. Tex. Penal Code § 12.35. Class A misdemeanors are punishable by jail up to 1 year and/or a fine up to $4,000. *Id.* § 12.21. Perjury—a distinct crime from making a false statement on a government record with intent to induce an election official to allow voting—is a Class A misdemeanor. *Id.* § 37.02(b).

[7] Under Texas law existing before SB 5, individuals who "knowingly make[] a false entry in . . . a governmental record" commit the crime of "Tampering with Governmental Record", Tex. Penal Code § 37.10(a), and the punishment when this crime is committed *intentionally* is a "state jail felony," *id.* § 37.10(c)(1). The requisite intent is an "intent . . . to defraud or harm another." *Id.* "[C]ourts have recognized that 'intent to defraud' has been defined as 'the intent to cause another to rely upon the

Plaintiffs repeatedly assert that these potential penalties for committing the crimes of perjury or making a false statement intentionally to induce an election official to allow voting—both of which require intent—somehow perpetuate a discriminatory effect. D.E. 1051 at 7, 15, 16-17. As an initial matter, South Carolina has similar penalties for making false statements on the reasonable-impediment-declaration for voting without photo ID, and that reasonable-impediment-declaration procedure was precleared by a three-judge federal court. *South Carolina v. United States*, 898 F. Supp. 2d 30, 36-37 & nn.5, 39, 42 (D.D.C. 2012) (mem. op.).[8] More fundamentally, if a voter falsely *and intentionally* claims a reasonable impediment to obtaining photo ID without actually having a reasonable impediment, then that voter—by definition—faces no material burden on voting or any discriminatory effect. After all, "the discriminatory effect" found by the Fifth Circuit only extends to "voters who do not have SB 14 ID *or are unable to reasonably obtain such identification*." *Veasey v. Abbott*, 830 F.3d 217, 271 (5th Cir. 2016) (en banc) (emphasis added). In contrast, a voter who actually has a reasonable impediment—or even a voter who inaccurately asserts

falsity of a representation, such that the other person is induced to act or refrain from acting.'" *Hunter v. State*, 14-13-00847-CR., 2014 WL 6923116, at *3 (Tex. App.—Houston [14th Dist.] Dec. 9, 2014, pet. ref'd) (mem. op.) (quoting *Wingo v. State*, 143 S.W.3d 178, 187 (Tex. App.—San Antonio 2004), *aff'd*, 189 S.W.3d 270 (Tex. Crim. App. 2006)). A person intentionally falsifying a reasonable-impediment declaration is intending to induce an election official into allowing the person to vote.

[8] *See* Act No. 27, R 54, 119th Leg., R.S. § 5, S.C. Laws, H3003 (ratified May 17, 2011) (codified at S.C. Code § 7-13-710 (D)(1)) (precleared requirement that affidavit listing a reasonable impediment be executed under penalty of perjury); S.C. Code § 7-25-20(3) (fraudulent voting under false pretenses as to circumstances affecting qualification to vote is punishable by up to one year in prison); S.C. Code § 16-9-10(B)(2) (perjury is a misdemeanor punishable by up to six months in prison).

a reasonable impediment *without an intent to deceive*—does not commit perjury or violate § 63.0013 and will not be deterred from voting.

Plaintiffs suggest that "facing 'any type of law enforcement'" to vote is unlawful. D.E. 1051 at 17. That cannot possibly be correct, because it would prevent governments from ever enforcing election laws.

F. Both allow regular ballots to be cast without any mechanism for invalidating these votes cast. Finally, SB 5, just like the interim remedy, allows voters using the reasonable-impediment exception to cast *regular* ballots with only one trip to the polls—without any mechanism for those ballots to be invalidated.

Plaintiffs rely heavily on *McCrory*, *id.* at 8-9, but they ignore a key distinction between that North Carolina law and Texas's law. North Carolina's reasonable-impediment exception only allowed "the voter [to] fill out a provisional ballot, which [was] subject to challenge by any registered voter in the county." *McCrory*, 831 F.3d at 241. In contrast, Texas's reasonable-impediment exception allows voters to cast a *regular* ballot, and SB 5 provides: "An election officer may not question the reasonableness of an impediment sworn to by a voter in a declaration described in Subsection (i)." SB 5 § 2 (new Tex. Elec. Code § 63.001(d)). There is no Texas mechanism to invalidate regular ballots cast—including those cast through the reasonable-impediment exception. Thus, Texas's law is now more lax than North Carolina's in *McCrory*—and South Carolina's, which also had a mechanism to invalidate ballots cast through its reasonable-impediment exception, and was nevertheless precleared under VRA § 5 by a three-judge federal district court, *South Carolina*, 898 F. Supp.

2d at 36-37 & nn.5, 39, 42.

So, in Texas, there is no possible "lingering burden," *McCrory*, 831 F.3d at 240, from allegations that "County Boards of Elections were inconsistent about what they deemed a 'reasonable' impediment" and thus which reasonable-impediment ballots these boards were rejecting, *id.* at 243 (Motz, J., dissenting).

III. BECAUSE SB 5 ELIMINATES ANY DISCRIMINATORY EFFECT, THERE CANNOT POSSIBLY BE ANY ONGOING DISCRIMINATORY-PURPOSE VIOLATION.

Plaintiffs make no allegation that SB 5 was enacted with a discriminatory purpose, and they concede that SB 5 is "remedial legislation." D.E. 1051 at 10. As previously explained by defendants, an ameliorative amendment—like SB 5—eliminates any potential ongoing discriminatory purpose from a previous law. D.E. 1049 at 12-19. So there is no basis to enjoin, under the discriminatory-purpose claim, Texas's photo-ID voting law that includes SB 5's reasonable-impediment exception.

That is so here for at least two reasons. First, SB 5 eliminates any basis for a discriminatory-purpose claim because of the nature of the particular discriminatory-purpose claim alleged by plaintiffs. Plaintiffs alleged a discriminatory purpose from the lack of an exception for poorer voters to vote at the polls without photo ID, but SB 5 provides precisely such an exception. *See id.* at 15. SB 5 thus puts plaintiffs "in the position that they would have been absent the discrimination." D.E. 1051 at 8.

Second, without an ongoing discriminatory effect, there can be no ongoing discriminatory purpose. D.E. 1052 at 9-11 (U.S. remedies brief, collecting cases). An element of a discriminatory-purpose claim is the existence of a discriminatory effect. *See id.*; *see, e.g.*, *Palmer v. Thompson*, 403 U.S. 217, 224 (1971) ("[N]o case in this

Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it."); *Cotton v. Fordice*, 157 F.3d 388, 391-92 & n.9 (5th Cir. 1998) (discriminatory-purpose claim requires "effects as well as motive"). And as explained above, SB 5 cures any discriminatory effect.

Plaintiffs rely on inapposite discriminatory-purpose cases[9] that did *not* involve any ameliorative legislative change eliminating the discriminatory effect.[10] For example, *Hunter* invalidated a law because it continued to have a discriminatory *effect*: the law's "original enactment was motivated by a desire to discriminate against blacks on account of race and the section *continues to this day to have that effect*."[11]

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[9] Plaintiffs cite (D.E. 1051 at 9) *City of Port Arthur v. United States*, but that was a VRA § 5 preclearance case. *See* 459 U.S. 159, 160-61 (1982). VRA § 5 imposes a stricter retrogression standard that differs from § 2's discriminatory-purpose and -effect standards. *South Carolina*, 898 F. Supp. 2d at 51 n.14. *Port Arthur* thus did not involve the proper constitutional or VRA § 2 remedy for discriminatory purpose. *Port Arthur* mentioned in passing that elimination of "the majority-vote element" (requiring runoffs if no one obtained 50% of the vote) "was a reasonable hedge against the possibility that the . . . scheme contained a purposefully discriminatory element," 459 U.S. at 164, 168, but that statement is simply an application of § 5's distinct retrogression standard preventing any potential backsliding when a covered jurisdiction sought to change its election laws. *See Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 335 (2000). *Port Arthur* thus was not considering a case like the one here, where there is no § 5 retrogression standard implicated and the § 2 discriminatory effect has been eliminated.

[10] *See* D.E. 1051 at 2, 4, 9, 10 (relying on *Hunter v. Underwood*, 471 U.S. 222 (1985); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982); *City of Richmond v. United States*, 422 U.S. 358 (1975); *Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430 (1968); *Louisiana v. United States*, 380 U.S. 145 (1965)—none of which involved a subsequent ameliorative legislative change that eliminated the discriminatory effect, *see* D.E. 1049 at 15-18).

[11] *Perez v. Abbott*, No. 1:11-CV-360, 2017 WL 1787454 (W.D. Tex. May 2, 2017), was an advisory opinion on a moot issue, so that court lacked Article III jurisdiction to issue that decision. *See Davis v. Abbott*, 781 F.3d 207, 215 (5th Cir. 2015) ("Texas had

471 U.S. at 233 (emphasis added), *quoted in Cotton*, 157 F.3d at 391. And *Louisiana* involved a legislative change, but it was *not* ameliorative. *Louisiana* invalidated a citizenship test for voter registration that "d[id] not provide for a reregistration of voters already accepted by the registrars" so "it would affect only applicants not already registered"; and this perpetuated the discriminatory effect because it "would not disturb the eligibility of the white voters who had been allowed to register while discriminatory practices kept [blacks] from doing so." 380 U.S. at 155. Thus, the Court ordered that Louisiana's "new 'citizenship' test should be postponed . . . until those parishes have ordered a *complete reregistration of voters*, so that the new test will apply alike *to all or to none*." *Id.* (emphases added). Plaintiffs are incorrect in asserting that the law invalidated in Louisiana was "apparently non-discriminatory standing alone."[12] D.E. 1051 at 9.

Plaintiffs try to limit *Cotton* to situations where ameliorative changes occur decades apart, D.E. 1051 at 10, but *Cotton*'s reasoning was not limited to a particular intervening time period. When an ameliorative amendment is made through "a deliberative process" like the legislative process, 157 F.3d at 391—as opposed to "involuntary" amendment made only through the "judicial process," *id.* at 391 n.8—then

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already mooted the entire lawsuit by repealing the 2011 plan and adopting the interim plan in its place"). The State will be challenging that interlocutory ruling at the appropriate time (the case is still before the district court). Regardless, *Perez*'s (erroneous) conclusion to the contrary rested on a (wrong) finding that the discriminatory effect from the 2011 redistricting plan "persist[ed] in the 2013 plans, though some perhaps to a lesser degree." 2017 WL 1787454, at *1.

[12] In fact, the *Louisiana* footnote that plaintiffs cite makes clear "that the Government ha[d] pending in a lower court a new suit challenging registration procedures in Louisiana 'under the new regime.'" 380 U.S. at 154 n.17; D.E. 1051 at 9.

the "amendment superseded the previous provision *and removed the discriminatory taint associated with the original version*," *id.* at 391 (emphasis added). Plaintiffs assert that "SB 5 does not even reenact SB 14," D.E. 1051 at 10, but SB 5 amends SB 14 to fundamentally alter SB 14's identification requirement for voting in person. *Id.* at 8. And it is unclear how the formality of including the entire text of a previously enacted statute within a subsequent ameliorative amendment has anything to do with that subsequent remedial amendment's removing discriminatory taint from a previously enacted statute—particularly when *Cotton* itself involved a subsequent "amendment" to the previous statute (broadening that previously existing felon-disenfranchisement statute "by adding 'murder' and 'rape'"), 157 F.3d at 391.

Plaintiffs chide the Legislature for passing SB 5 "while still in the midst of this ongoing litigation."[13] D.E. 1051 at 10. But the Fifth Circuit has made clear that ameliorative legislative amendments are to be encouraged—not shunned. *See, e.g.*, *Miss. State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 408-09 (5th Cir. 1991) (rejecting discriminatory-purpose claim where "[t]he legislature enacted a statute responsive to the district court's order"). Indeed, "courts clearly defer to the legislature in the first instance to undertake remedies for violation of [VRA] § 2," *id.* at 406, and "[the Fifth Circuit] has repeatedly held that it is appropriate to give affected political subdivisions at all levels of government the first opportunity to devise remedies for

[13] Contrary to Plaintiffs' statement, the State had not "exhausted all potential legal options." D.E. 1051 at 10. *See Abbott v. Veasey*, 137 S. Ct. 612, 613 (2017) (Roberts, C.J., respecting the denial of certiorari) (any finding of discriminatory purpose or effect "will be better suited for certiorari review" "after entry of final judgment").

violations of the Voting Rights Act," *Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1124 (5th Cir. 1991).

IV. THE STATE HAS ALREADY STIPULATED THAT IT WILL CONDUCT SIGNIFICANT TRAINING OF ELECTION OFFICIALS AND EDUCATION OF VOTERS BEYOND WHAT EVEN THIS COURT'S INTERIM REMEDY ORDERED.

Plaintiffs entirely ignore the fact that the State has already publicly stipulated that it will conduct significant training of election officials and education of voters. *Cf.* D.E. 1051 at 14-17. This training goes beyond even what this Court ordered in the interim remedy (D.E. 895 at 3). *See* D.E. 1052 at 7-9 (U.S. remedies brief).

By the end of 2017, the State will notify each registered voter in writing of the photo-ID voting requirements including SB 5's reasonable-impediment exception, as required by preexisting Texas law. *See* D.E. 1039 at 3 (citing Tex. Elec. Code §§ 14.001(a), 15.001(a), 15.005(a)). The interim remedy did not require such notice. *See* D.E. 895.

The State will spend $4 million on various voter education and outreach efforts over two years. D.E. 1039 at 2. The State already spent $2.5 million on voter education in 2016 under the interim remedy. D.E. 895 at 3. This 2016 education already included significant outreach about the availability of a reasonable-impediment declaration because the interim remedy included such an exception, *id.* at 1-2, just as Texas law now includes under SB 5. And, as SB 5 requires, Texas will continue to use mobile units to provide free EICs to voters. SB 5 § 1 (new Tex. Elec. Code § 31.013(a)).

The State will also train its election officials, update its VoteTexas.gov website, and update training materials for election officials and poll workers. D.E. 1039 at 1-2. It is particularly ironic for plaintiffs to complain about a perceived lack of training

of election officials and allege that the "exigency" to "train officials now regarding 2018 procedures" is "entirely self-created" by defendants. D.E. 1051 at 18. It is *plaintiffs themselves* who have objected to defendants' efforts to train election officials this month about not only the interim remedy's but also SB 5's reasonable-impediment exception in the alternative. *See* D.E. 1047 (defendants' pending motion requesting clarification regarding training election officials this month about both reasonable-impediment exceptions); D.E. 1047-2 (Exh. B to that motion, showing plaintiffs' objection: "**The materials SHOULD NOT include any description of SB 5.**"; "Any mention of SB 5 in these educational materials is misleading, confusing, and in contempt of the Court's order.").[14]

Thus, given the previous training and education already conducted under this Court's interim remedy, D.E. 895 at 3, and the State's public stipulation to significant training and education, there is no "necessity" for this Court to enter any remedy "of educational and training efforts." *Veasey*, 830 F.3d at 271-72. Regardless, any remedy about education and training could not possibly alter the substance of Texas's photo-ID voting laws including SB 5.

V. THERE IS NO BASIS FOR THIS COURT TO RETAIN JURISDICTION.

Plaintiffs' request (D.E. 1051 at 2, 19) for this Court to retain jurisdiction to review any potential ameliorative photo-ID voting legislation must be denied. *See* D.E. 1052 at 11-12 (U.S. remedies brief). In VRA § 3, Congress restricted when courts

[14] Defendants' motion for clarification is thus not a "thinly veiled attempt" to do anything. D.E. 1051 at 18. It is a request to train election officials in a way that plaintiffs expressly objected to and alleged (wrongly) was in contempt of this Court's order.

can order judicial preclearance of election laws. *See, e.g.*, *City of Milwaukee v. Illinois*, 451 U.S. 304, 313-16 (1981) (federal statutes supersede federal common law). Per this Court's order, defendants will address § 3 preclearance at a later date. *See* D.E. 1049 at 19; D.E. 1044 at 2 (order).

The reason why courts have retained jurisdiction in election cases is to give legislatures the first opportunity to remedy violations (as courts are required to do, *see supra* pp.12-13). *See* D.E. 1052 at 12 (citing *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *Westwego Citizens*, 946 F.2d at 1124). But, here, the Texas Legislature has now remedied the violation found by the Fifth Circuit.

In all events, any potential retention of jurisdiction would only be proper if an ordinary injunction could not remedy any possible violations. Retention of jurisdiction is "not necessary here in light of [an ordinary] injunction." *McCrory*, 831 F.3d at 241.

CONCLUSION

For the reasons stated above, defendants respectfully request that the Court enter the following remedy, and only this remedy: "The reasonable-impediment-declaration procedure contained in this Court's August 10, 2016 agreed interim remedy, *see* D.E. 895, shall be used in Texas elections through December 31, 2017—and this remedy dissolves on January 1, 2018." D.E. 1049 at 19.

Date: July 17, 2017

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant
Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Chief, General Litigation Division

MATTHEW H. FREDERICK
Deputy Solicitor General

JASON R. LAFOND
Assistant Solicitor General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-6407
Fax: (512) 474-2697

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2017, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief does not exceed 15 pages, the page limit established by this Court's June 20, 2017 order on procedure for addressing remedies.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

EXHIBIT 9

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANTS' PROPOSED
FINDINGS OF FACTS AND CONCLUSIONS OF LAW
(REDACTED)

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INTRODUCTION

This case presents an exceptional scenario. Plaintiffs claim that Senate Bill 14 ("S.B. 14"), a law supported by a majority of Texans—including a majority of Republicans, of Democrats, of African-Americans, and of Hispanics—and adopted with the votes of some minority legislators, was enacted for the purpose of discriminating against racial minorities. Plaintiffs demanded and obtained a treasure trove of privileged legislative material—thousands of internal legislative documents and hours of legislator depositions—access usually denied in even the most extraordinary cases. But despite their unlimited access to the confidential and privileged communications of Texas legislators who supported S.B. 14, plaintiffs could proffer no evidence that any legislator harbored even a private intention to disenfranchise minority voters by enacting a facially neutral voter-ID law, much less that the full Legislature enacted the law for the purpose of discriminating on the basis of race. The legislative record—public and private—only confirmed that the Legislature passed S.B. 14 for reasons recognized as legitimate by the Supreme Court, Congress, the Carter-Ford and Carter-Baker Commissions, and many other States.

Nevertheless, Plaintiffs have pushed a false narrative in this case that Republicans in the Texas Legislature, fearful of a rise in the political power of Democratic-leaning minority voters in the State, turned to photo-ID requirements to entrench Republican power by disenfranchising minority voters. To shore up that narrative, Plaintiffs relied on (1) historical instances of discrimination, (2) discriminatory acts by persons outside the Legislature, (3) legislative support for unrelated, allegedly discriminatory bills involving immigration and border security, and (4) speculation by

some S.B. 14 opponents that the bill's proponents acted for a discriminatory purpose. The Fifth Circuit has now held conclusively that this evidence is not probative of the Legislature's purpose in passing S.B. 14. It may not be considered. Without that evidence, which is irrelevant, Plaintiffs' narrative unravels. They have no evidence that any legislator acted with a racially discriminatory purpose, let alone that S.B. 14's proponents engaged in a silent conspiracy to discriminate against minority voters. On the contrary, the record confirms that the Texas Legislature acted to combat voter fraud and safeguard voter confidence.

The baseless narrative promoted by Plaintiffs ignores not only the legislative record but also the historical context of S.B. 14, which begins with the 2000 election—a watershed moment when many citizens questioned the confidence they had in American electoral systems, in light of that year's hotly contested presidential election. In the aftermath, a consensus developed that numerous changes needed to be made, including changes to address potential voter fraud. A common-sense way to prevent one form of potential fraud—impersonation—is to require identification. Thus, between 2001 and 2011, "nearly 1,000" voter ID "bills [were] introduced in a total of 46 states." DEF0053 (National Conference of State Legislatures, *Voter Identification Requirements* (April 7, 2012)) at 5 (ROA.78671).[1] While this was occurring, a strong majority of Americans expressed support for requiring a photo ID to vote.

[1] DEF0053 is a summary of nationwide voter identification requirements prepared by the National Conference of State Legislatures (ROA.78667-85).

As one would expect, when voter ID became "a national issue," it also "became a political issue in the State of Texas." Smith Dep. 69:23-25 (ROA.59509). Accordingly, the Texas Legislature, like those in many other States, sought to enact voter-ID legislation. At first, Republicans in the Texas Legislature looked to compromise with Democrats. They proposed a law that allowed certain photo and non-photo IDs to be used, despite their preference to enact a photo-voter-ID law that would have a greater potential to deter and prevent voter fraud. But Democrats blocked these compromises in three straight legislative sessions (2005, 2007, and 2009) by using procedural maneuvers. Meanwhile, support for photo ID laws was growing, and Republicans continued to gain additional seats in the Texas Legislature.

After the 2009 legislative session, it had become clear that Democrats were not going to support any compromise. Republicans then secured an overwhelming majority of the seats in the Texas Legislature in the 2010 elections. With a newly won supermajority, Republicans in the 2011 Legislature chose to pursue the preferences of those who had voted them into office and could vote them out. The result was a voter ID law that required voters to produce widely available and widely held photo identification—including free voter IDs provided by the State—in order to confirm voters' identity.

By enacting S.B. 14, the Texas Legislature honored the will of the majority of Texans, regardless of race, ethnicity, or political affiliation. In doing so, the Legislature acted to prevent and deter voter fraud and to safeguard confidence in the electoral

system—legitimate policy concerns which are reflected throughout the legislative record and which have been recognized by the Supreme Court. S.B. 14 is not a law that "can plausibly be explained only as a [race]-based classification"—the standard required to establish a discriminatory purpose in violation of the Fourteenth Amendment. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 275 (1979).

PROPOSED FINDINGS OF FACT

I. TEXAS VOTER-IDENTIFICATION REQUIREMENTS PRIOR TO THE ENACTMENT OF S.B. 14

1. Prior to the enactment of S.B. 14, Texas Election Code Section 63.001(b) provided that an in-person voter may cast a regular ballot upon presentation of only a voter registration certificate, which did not have a photo. Tex. Elec. Code § 63.001(b) (2010).

2. Registered voters who did not present a voter registration certificate at the polls could still vote upon executing an affidavit stating that they did not have a voter registration certificate at the polling place and presenting an acceptable form of alternative identification. *Id.* § 63.008(a). If a voter appearing at the polls failed to execute an affidavit or provide acceptable identification, then the voter could cast a provisional ballot. *Id.* § 63.008(b).

3. The law recognized several acceptable alternative forms of identification for voting:

> (1) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;
>
> (2) a form of identification containing the person's photograph that establishes the person's identity;

(3) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(4) United States citizenship papers issued to the person;

(5) a United States passport issued to the person;

(6) official mail addressed to the person by name from a governmental entity;

(7) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(8) any other form of identification prescribed by the Secretary of State.

Id. § 63.0101 (2010).

4. In some circumstances, voters were required to present identification even if they presented their voter registration certificate at the polls. For example, if a voter did not provide a Texas driver's license number, a Texas personal identification card number, or the last four digits of their Social Security number on the voter registration application, the voter could receive a voter registration certificate, but was later required to present a qualifying form of identification when voting. If the voter provided a driver's license, personal identification card, or Social Security number that did not match Texas Department of Public Safety (DPS) or Social Security Administration records, the voter was registered to vote, so long as the voter confirmed that the information was correct, but the voter was required to submit proof of identification to vote. *Id.* § 63.009 (2010).

5. Pre-S.B.-14 law permitted qualified voters who expected to be absent from their county of residence on Election Day, were disabled, were 65 or older on Election Day, or were confined in jail to vote early by mail without presenting identification. *See id.* §§ 82.001-004 (2010).

II. S.B. 14's Provisions and Implementation

6. S.B. 14 is a facially neutral statute that, in addition to generally requiring a photo ID in order to vote, seeks to minimize the burden faced by eligible voters in casting their ballot while protecting the integrity of elections in Texas.

A. S.B. 14 Generally Requires Voters to Prove Their Identity Via Photo ID

7. The central change made by S.B. 14 to then-existing law was the requirement that in-person voters provide a government-issued photo ID when voting.

8. S.B. 14 amended the law to require that voters present one of the following forms of identification when voting in person:

> (1) a driver's license, election identification certificate, or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than 60 days before the date of presentation;
>
> (2) a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than 60 days before the date of presentation;
>
> (3) a United States citizenship certificate issued to the person that contains the person's photograph;
>
> (4) a United States passport issued to the person that has not expired or that expired no earlier than 60 days before the date of presentation; or
>
> (5) a license to carry a concealed handgun issued to the person by the Department of Public Safety that has not expired or that expired no earlier than 60 days before the date of presentation.

Act of May 16, 2011, 82d Leg., R.S., ch. 123 § 14 ("S.B. 14") (codified at Tex. Elec. Code § 63.0101).

B. The Texas Legislature Sought to Mitigate Potential Burdens on Eligible Voters

9. S.B. 14 contains many mitigating provisions aimed at preventing any disproportionate impact on those of lower socioeconomic status.

1. SB 14 creates free Election Identification Certificates.

10. S.B. 14 requires the Department of Public Safety to issue an Election Identification Certificate ("EIC") to a registered voter who does not have another form of identification required by the bill to vote. Because those with less means may find it marginally harder to obtain S.B. 14-compliant ID, S.B. 14 prohibits the DPS from charging a fee for an EIC. S.B. 14 § 20 (codified at Tex. Transp. Code § 521A.001).

11. By offering a free EIC, the Legislature intended to ensure that any voter who is potentially affected by the photo ID requirement can obtain a free photo ID from the DPS.

2. S.B. 14 preserves certain voters' ability to vote by mail without a photo ID.

12. S.B. 14 leaves in place the ability of those 65 or over on Election Day to vote by mail without photo ID. Tex. Elec. Code § 82.003.

13. S.B. 14 leaves intact the provision allowing voters with "a sickness or physical condition that prevents [them] from appearing at the polling place on Election Day without a likelihood of needing personal assistance or of injuring [their] health" to vote by mail without photo ID. *Id.* § 82.002.

14. S.B. 14 does not disturb the ability of persons confined to a county jail to vote by mail without photo ID. *Id.* § 82.004.

3. S.B. 14 created exceptions to accommodate the disabled, religious objectors, and those affected by natural disasters.

15. Persons determined to have a disability by the United States Social Security Administration or determined to have a disability rating of at least 50 percent by the United States Department of Veterans Affairs may continue to vote at the polls by presenting only a voter registration certificate. S.B. 14 §§ 1, 9 (codified at Tex. Elec. Code §§ 13.002(i), 63.001(h)).

16. A voter need not present a photo ID if he executes an affidavit stating that "the voter has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief." *Id.* § 17 (codified at Tex. Elec. Code § 65.054(b)(2)(B)).

17. A voter need not present a photo ID if he executes an affidavit stating that the voter does not have the required identification "as a result of a natural disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the date the ballot was cast, and caused the destruction of or inability to access the voter's identification." *Id.* (codified at Tex. Elec. Code § 65.054(b)(2)(C)).

4. Provisional ballots

18. Voters who do not present the required identification may cast a provisional ballot if they execute an affidavit stating that the voter "(1) is a registered voter in the precinct in which the person seeks to vote; and (2) is eligible to vote in the election." *Id.* § 15 (codified at Tex. Elec. Code § 63.011(a)(1)).

19. For the provisional ballot to be counted, the voter must present identification or prove their eligibility for an exemption within six days of the election. *Id.* § 18 (codified at Tex. Elec. Code § 63.0541).

5. S.B. 14 Provides an Accommodation for Voters Whose Photo ID Shows a Name that Differs from the Voter's Name as Listed on the Voting Rolls.

20. Section 9(c) of S.B. 14 provides that a poll worker must accept a voter, even if the voter's name on his or her registration differs slightly from his or her identification, if the voter avers that the voter is the person on the list of registered voters. *Id.* § 9(c) (codified at Tex. Elec. Code § 63.001(c)).

6. Training and voter outreach

21. S.B. 14 mandates a statewide effort led by the Secretary of State to educate voters concerning S.B. 14's new requirements. *Id.* § 5 (codified at Tex. Elec. Code § 31.012(a)).

22. S.B. 14 increases funding for voter registration activities. *Id.* § 24.

23. S.B. 14 requires that poll voters be trained in the acceptance and handling of acceptable forms of ID. *Id.* § 6 (codified at Tex. Elec. Code § 32.111(c)).

C. Texas Diligently Implemented S.B. 14 to Ensure that Every Texan Voter Had an Opportunity to Vote and to Obtain a Free Election Identification Certificate.

24. Texas's effort to ensure that all eligible voters can vote did not end with the enactment of S.B. 14. *See, e.g.*, Trial Tr. 25:10-17 (Sept. 10, 2014) (Dewhurst) (ROA.100787).

25. The State took additional steps to reduce any burden imposed by the need to obtain an EIC:

1) In 2015, the Texas Legislature enacted S.B. 983—in conformance with its intent to offer free EICs—that prohibited the charging of *any* fee connected with obtaining documents to obtain a free EIC. Act of May 25, 2015, 84th Leg., R.S., ch. 130, 2015 Tex. Gen. Laws 1134. Birth certificates requested to obtain an EIC had cost between $2 and $3 instead of the normal fee of $22. Tex. Admin. Code § 181.22(t); Tex. Health & Safety Code § 191.0045; Trial Tr. 323:2-9 (Sept. 9, 2014) (Farinelli) (ROA.100676). These fees had been imposed before 2015 by statutes separate from S.B. 14, and those separate statutes predated S.B. 14.

2) Local registrars have been trained to issue EIC birth certificates. Trial Tr. 326:21-327:13 (Sept. 9, 2014) (Farinelli) (ROA.100679-80). There are more than 400 local registrars in the State. *Id.* at 318:17-319:8 (ROA.100671-72).

3) If someone is 75 years or older, he may send family or friends to get his birth certificate. *Id.* at 329:5-13 (ROA.100682).

4) County officials are flexible about the forms of ID they accept for birth certificates. *See, e.g.*, Trial Tr. 136:12-25 (Sept. 3, 2014) (Mora) (ROA.99068) (explaining that clients of the StewPot shelter can use a StewPot-issued ID to obtain a birth certificate at Dallas Vital Stats office).

26. At the time of trial, the Department of Public Safety operated 225 driver's license offices throughout the State. Trial Tr. 149:23-150:7 (Sept. 9, 2014) (Peters) (ROA.100502-03).

27. At the time of trial in October 2014, approximately 99.95% of the Texas population lived less than 50 miles from a Texas DPS office, and approximately 98.7% lived less than 25 miles from a Texas DPS office. DEF1170; Trial Tr. 214:4-215:10 (Sept. 9, 2014) (Rodriguez) (ROA.100567-68); Trial Tr. 335:5-25 (Sept. 4, 2014) (Burden) (ROA.99567).

28. Free EICs are available at every DPS driver's license office. Trial Tr. 214:4-215:10 (Sept. 9, 2014) (Rodriguez) (ROA.100567-68); Trial Tr. 335:5-25 (Sept. 4, 2014) (Burden) (ROA.99567).

29. DPS has a "homebound program" to issue IDs to people with disabilities on demand. Trial Tr. 162:18-163:22 (Sept. 9, 2014) (Peters) (ROA.100515-16).

30. The Secretary of State's office, the Department of Public Safety, and the counties themselves have implemented a mobile EIC unit program, to issue EICs on a full-time basis in counties that do not have a DPS office. Trial Tr. 146:4-146:8 (Sept. 9, 2014) (Peters) (ROA.100499); Trial Tr. 220:8-222:12 (Sept. 9, 2014) (Rodriguez) (ROA.100573-75); Ingram Dep. 47:1-48:13 (ROA.61446); Cesinger Dep. 15:13-19 (ROA.59945); DEF2738 (ROA.97237-39) (listing county locations issuing EICs). If local officials request a mobile unit, one will be dispatched. Trial Tr. 162:8-13 (Sept. 9, 2014) (Peters) (ROA.100515).

31. Because of these efforts, every county in the State has had a physical location where a voter could obtain a free EIC. DEF2739 (ROA.97240) (EIC State and County Participation Map); Trial Tr. 263:6-21 (Sept. 9, 2014) (Rodriguez) (ROA.100616). These locations were publicized extensively through press releases, media interviews, social media, and local press statements. Trial Tr. 146:12-146:21, 160:10-161:2 (Sept. 9, 2014) (Peters) (ROA.100513-14); Trial Tr. 246:11-247:16 (Sept. 9, 2014) (Rodriguez) (ROA.100599-600); Cesinger Dep. 56: 7-13; 56:25-57:2 (ROA.59955) ("[T]he goal is to make sure that anyone who is eligible for one of these EICs knows about it and about the availability.").

32. In addition, anticipating an increased demand for identification, the Texas Legislature appropriated significant funds to improve driver's license services. Trial Tr. 92:1-16 (Sept. 11, 2014) (Williams) (ROA.101277). At the time of trial, the Driver's License Division of the DPS has increased its staff by hundreds of employees, and the DPS had opened six new "Mega Centers." Trial Tr. 212:19-213:1 (Sept. 9, 2014) (Rodriguez) (ROA.100565-66).

33. The Texas Secretary of State also instructed DPS offices in the top 13 counties where the Secretary of State thought that there may be potential voters who do not possess S.B. 14 ID to remain open on Saturdays as an election approached. Trial Tr. 234:15-235:22 (Sept. 9, 2014) (Rodriguez) (ROA.100587-88). Overtime for DPS workers was also authorized. *Id.*

34. Plaintiffs observed that at the time of trial only a few hundred EICs had been issued, but this might suggest that either (1) there is not much demand for EICs or (2) voters prefer to pay for a State-issued ID card or driver's license, which can be used for more than voting. [redacted]

1. Plaintiffs' inability to find a single voter who was disenfranchised by S.B. 14 confirms that any potential negative impact was severely limited.

35. Texas's efforts at mitigating the burden of S.B. 14 on eligible voters can be seen in the fact that plaintiffs found no evidence of a single identifiable voter whom S.B. 14 will prevent from voting.

36. Prior to the enactment of S.B. 14, the Texas Legislature considered empirical, real-world studies—as opposed to statistical estimates—showing that requiring voters to prove their identity with a photo ID did not negatively affect the ability of those entitled to vote to do so. *See, e.g.*, DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., Exhibits 7, 9, and 10 (Mar. 11, 2009) (ROA.73466-

81, 73417-22, 73423-45));[2] Dewhurst Dep. 76:22-77:9 (ROA.61014-15); Fraser Dep. 72:9-21, 74:13-22 (ROA.61180-81). The Texas Legislature also learned that similar voter ID laws did not result in disenfranchisement, as the opponents of those laws—just like opponents of S.B. 14—had predicted. *See, e.g.*, DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., Exhibits 23, 25, and 28 (Mar. 11, 2009) (ROA.73665-71, 73679-84, 73703-04)).[3]

37. One of the academic studies on this issue considered by the Texas Legislature was published by Plaintiffs' own expert. Dr. Ansolabehere examined a number of questions related to turnout and voter ID laws like S.B. 14 and found that "an almost immeasurably small number of people" were negatively affected by such laws. DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7, at 8 (Mar. 11, 2000) (ROA.73378) (quoting Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007) (ROA.78203))). In other words, the number was "too small to be of practical concern." *Id.* Exhibit 9, at 121 (ROA.73417) (citing Ansolabehere's 2007 study).

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[2] Exhibit 7 is Jeffrey Milyo, The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis, Institute of Public Policy Publication Report 10-2007 (Dec. 2007), which can be also be found at DEF0024 (ROA.78267-82); Exhibit 9 is Jason D. Mycoff, et al., The Empirical Effects of Voter ID Laws: Present or Absent, 42 PS: Political Science and Politics 121 (2009); which can also be found at DEF0025 (ROA.78283-87); and Exhibit 10 is David B. Muhlhausen and Keri Weber Sikich, New Analysis Shows Voter Identification Laws Do Not Reduce Turnout, The Heritage Center for Data Analysis (Sept. 10, 2007), which can be also be found at DEF0412 (ROA.84142-64).

[3] Exhibit 23 is the written testimony of Frank B. Strickland; Exhibit 25 is the written testimony of Robert A. Simms, Georgia Deputy Secretary of State; and Exhibit 28 is a letter to Senator Troy Fraser from the Todd Rokita, Indiana Secretary of State.

38. Texas began enforcing S.B. 14 on June 25, 2013. Trial Tr. 328:17-329:10 (Sept. 10, 2011) (Ingram). It was in effect for three statewide elections, multiple special elections, and many local elections before trial in October 2014. *See* Trial Tr. 329:5-6 (Sept. 4, 2014) (Burden) (ROA.101090-91); Trial Tr. 86:10-14 (Sept. 10, 2014) (Hood) (ROA.100848). Yet at trial, plaintiffs' experts could not identify a single person whom S.B. 14 will prevent from voting. This was not for lack of effort. DOJ went to great lengths to try to find persons harmed by S.B. 14: its lawyers crisscrossed Texas, traveling to homeless shelters looking for anyone disenfranchised by the law. *See* Trial Tr. 143:24-145:6 (Sept. 3, 2014) (Mora) (ROA.99075-77). Plaintiff organizations made similar efforts. *See* Trial Tr. 267:7-13 (Sept. 3, 2011) (Green) (ROA.99199); Lydia Dep. 126:15-128:22 (ROA.64201); LULAC Stipulation (ECF No. 547) (ROA.24727-31); LUPE Stipulation (ECF No. 550) (ROA.24741-44).

39. Even the named plaintiffs could not show that S.B. 14 prevented them from voting. Nine of the fourteen individual plaintiffs could vote by mail without photo ID. Trial Tr. 90:22-91:1 (Sept. 2, 2014) (F. Carrier) (ROA.98722-23); 291:25-292:3 (Sept. 3, 2014) (Benjamin) (ROA.99223-24); 98:2:-5 (Mendez, Jr.) (ROA.99030); 146:7-12 (Sept. 4, 2014) (Taylor) (ROA.99378); 207:10-11 (Sept. 5, 2014) (Gandy) (ROA.99824); 219:18-19 (Mr. Lara) (ROA.99836); 247:2-5 (Ms. Lara) (ROA.99864); [redacted]. And of these nine, at least two actually had voted after S.B. 14 took effect. Trial Tr. 216:12-21 (Sept. 5, 2014) (Gandy) (ROA.99833); Trial Tr. 102:16-22 (Sept. 3, 2014) (Mendez, Jr.) (ROA.99034).[4]

[4] As the Fifth Circuit noted, Mr. Carrier and Mr. Benjamin were unsuccessful in obtaining an S.B. 14 ID shortly after enforcement of the law began. *Veasey*, 830 F.3d at 254-55. But they both *did not need* such ID, because they could have voted by mail without it.

40. Although the Fifth Circuit noted that Plaintiff Floyd Carrier had unsuccessfully tried to get an S.B. 14 ID prior to the enforcement of the law because of trouble with his birth certificate (*Veasey v. Abbott*, 830 F.3d 216, 254-55 (5th Cir. 2016) (en banc)),[5] he not only could have voted by mail, but he also could have received a disability exemption, which would have allowed him to vote in-person without an ID. *See* Trial Tr. 73:1-9 (Sept. 2, 2014) (C. Carrier) (ROA.98705). Not only that, Mr. Carrier regularly visits a Veterans Administration ("VA") hospital, where he could renew his S.B.-14-compliant VA ID. *See id.* 73:10-13 (ROA.98705). Plaintiffs' counsel recruited Mr. Carrier for this lawsuit because of his problems obtaining certain forms of S.B. 14, but they failed to tell him about the numerous other options available to him. *See id.* 74:17-21. Mr. Carrier testified that, having learned that he can use a VA ID to vote, he was "going to go get it." *Id.* 91:10 (F. Carrier) (ROA.98723).

41. The Fifth Circuit also noted that Plaintiff Gordon Benjamin had unsuccessfully tried to get an S.B. 14 ID because he did not have a birth certificate. *Veasey*, 830 F.3d at 252-55; [redacted]. To the extent some individuals may have difficulty obtaining a birth certificate, the only relevant evidence in the record indicates that they are elderly and therefore able to vote without a photo ID. There is no evidence of any voter who was unable to obtain a birth certificate but also ineligible for an exception to the photo-ID requirement.

[5] "Q: [A]ll of that work you did back in early January or early 2013 to get an ID and get a birth certificate, all of that was for the purposes of you trying to get a personal ID to take care of your personal business, correct? A: My business, yeah. Unhuh." Trial Tr. 88:17-21 (Sept. 2, 2014) (F. Carrier) (ROA.98720).

42. Among the remaining five individual plaintiffs, three already had an S.B. 14-compliant ID. [redacted]; *see also* Opinion 79 (Oct. 9, 2014), ECF No. 628 (ROA.27104). Another chose to get a California driver's license instead of a Texas license because she planned to return to California after college. Trial Tr. 185:10-17; 190:11-191:6; 193:19-21 (Sept. 9, 2014) (Clark) (ROA.100538, 100543-44, 100546). And the last had the documentation necessary to obtain a number of S.B. 14 IDs, including a commercial driver's license if he paid outstanding fines for driving without insurance. *See* Trial Tr. 135:4-20 (Sept. 4, 2014) (Estrada) (ROA.99367) (discussing the fines), 143:6-9 (ROA.99375) (testifying that he could obtain an S.B. 14-compliant personal identification card); *id.* 346:7-19 (Sept. 9, 2014) (Farinelli) (ROA.100699) (testifying that Lionel Estrada can get a birth certificate with his social security card, a copy of his temporary driver's license, and workers' compensation correspondence from 2004).

43. Nor could Plaintiffs show that S.B. 14 prevented any of the thirteen additional voters Plaintiffs called as witnesses from voting. Eight of the thirteen could vote by mail without photo ID. Bates Dep. 48:7-8 (ROA.97450); Barber Dep. 14:3-6 (ROA.97471); Eagleton Dep. 8:6-10 (ROA.97466); Gholar Dep. 9:3-4 (ROA.97454); [redacted]. Of the remaining five, two already had an S.B. 14-compliant ID. *See* Bingham Dep. 37:9-10 (ROA.97456); [redacted]. And the three remaining witnesses had the documentation necessary to obtain an EIC. [redacted].

44. Incorrectly identifying Ms. Bates as a plaintiff, the Fifth Circuit observed that she could not vote because she did not have her birth certificate. *Veasey*, 830 F.3d at 255. But in addition to being able to vote by mail, [redacted].

2. Results from elections following S.B. 14's implementation confirm that any potential negative impact was significantly limited.

45. Despite the numerous elections that took place during full enforcement of S.B. 14, reports of voters being unable to present ID or experiencing other problems were "vanishingly small." Ingram Dep. 53:25-54:2 (ROA.64028); Trial Tr. 309:17-18 (Sept. 10, 2014) (Ingram) (ROA.101071); *see also* Ingram Dep. 55:8-24 (ROA.64018) ("We have realtime feedback from the public, and we get thousands of phone calls every month, and there has been absolutely almost no phone calls, emails, problems related to lack of an ID. The few that we've had primarily related to elderly folks who have been using an expired driver license but don't drive anymore. That has been—we've had maybe three or four of those who have been unable to have an ID, and obviously they can vote by mail. But as far as a pattern of people who said, 'I don't have an ID, I don't know what to do, how can I get one,' doesn't exist. Thousands of phone calls every month. We've got a public hotline that is on the back of every voter registration card, and we get all kinds of calls. We get calls because my name doesn't match. We get calls because of a lot of reasons, but not that I don't have an ID."); Trial Tr. 255:11-21 (Sept. 10, 2014) (Patrick) (ROA.101017) ("When voters aren't happy, you hear from them. They call your office. They find a reporter. They show up on a news station. And, again, there may have been a report somewhere, or a news story—or, you know, somewhere, but I'm just not aware of any. And, again, we're talking about millions of people. Could there have been a handful? I mean, I don't know, but I'm sure not aware of anyone."); *see also id.* at 253:19-254:22; 256:10-259:23

(ROA.101015-16, 101018-21); Patrick Dep. 253:3-254:5 (ROA.62154); Trial Tr. 335:10-336:1 (Sept. 10, 2014) (Ingram) (ROA.101097-98).

46. Plaintiffs deposed several county clerks, probing for the number of voter complaints concerning S.B. 14's requirements, but these clerks reported almost no complaints whatsoever. *See, e.g.*, Newman Dep. 43:14-15 (Jasper County) (ROA.62054) ("Q: Have you ever had complaints from constituents about the photo ID law? A: No."); Guidry Dep. 127:10-131:10 (Jefferson County) (ROA.63712-16); Stanart Dep. 109:19-24 (Harris County) (ROA.65424). The population of Jefferson County, Texas (whose county seat is Beaumont, Texas), for example, has a population that is over 10 percent Hispanic and over 30 percent African American. The county clerk of Jefferson County was elected to office as "a Democrat" and testified that she was formerly "a union official" who was "very, very involved" in politics and political campaigns from "a very, very young age." Trial Tr. 139:4-13 (Sept. 11, 2014) (Guidry) (ROA.101324). Furthermore, as county clerk, her office is responsible for administering elections, and if something goes wrong, she is often the first to know. *Id.* 139:17-141:25 (ROA.101324-26). Under questioning from plaintiffs, the Jefferson County Clerk reported that she received only one complaint about the implementation of S.B. 14, and it concerned an election worker's failure to check someone's photo ID:

> Q: Alright, now did you hear any complaints from anyone that they were not allowed to vote in the March [2014] primary because of a similar name issue?
>
> A: No, sir.
>
> Q: And I guess it would have been more a dissimilar name.
>
> A: Right.
>
> Q: Did anyone complain to you, "Hey, I was not allowed to vote because my name did not match my ID"?
>
> A: No.

> Q: Okay. Did anyone complain … to anyone in your office that they were not allowed to vote in the March 2014 primary because the name on the voter roll did not match exactly the name on their—the ID that they presented?
>
> A: No.
>
> Q: Okay. Did anyone complain to you after the 2014 March primary that for any reason S.B. 14 prevented them from being able to vote?
>
> A: No, sir.
>
> * * *
>
> Q: Okay. So that letter is the only complaint you're aware of in
>
> March for the 2014 primary related to S.B. 14, correct?
>
> A: Yes.
>
> Q: And the gentleman who made that complaint was not complaining that he was not allowed to vote because of the photographic requirement, correct?
>
> A: No, he was allowed to vote. He was complaining why was he not asked for his photo ID.

Trial Tr. 156:18-158:19 (Sept. 10, 2014) (Guidry) (ROA.101341-43). Guidry also testified that she attends the county commissioners meetings every Monday. Guidry Dep. at 111:22-25 (ROA.63696). Guidry reported that no citizen has ever complained to the county commissioners about S.B. 14's requirements and that, in fact, the issue has never come up. *Id.* at 112:3-12 (ROA.63697).

47. Moreover, voter turnout was generally unaffected in the two general elections conducted under the requirements of S.B. 14. Trial Tr. 335:10-336:1 (Sept. 10, 2014) (Ingram) (ROA.101097-98) ("The [November 2013] turnout was up substantially over the 2011 turnout"); *id.* 335:16-17 (ROA.101097) ("The turnout was up quite a bit, not quite double, and the process was very smooth."); *see also* Ingram Dep. 54:9-11

(ROA.64028) ("[T]here's not any evidence we've seen in the turnout pattern that indicates anybody has been deterred from voting. To the contrary."); Patrick Dep. 84:6-85:23 (ROA.64585-86) (testifying that a purpose of S.B. 14 was to increase turnout, and that turnout has indeed increased).

48. Numerous news stories confirmed that S.B. 14 had no deleterious effects. *See, e.g.*, DEF2500 (ROA.95011), DEF2503-2515 (ROA.95012-61).

49. Finally, a statistical analysis of elections held during the full enforcement of S.B. 14 confirmed that it had little, if any, real-world impact on the ability of those eligible to vote to do so. For example, an analysis of provisional ballots cast in Harris County during the 2013 constitutional amendment election and the 2014 primaries showed that only .04 percent of ballots cast in the 2013 constitutional amendment election and .02 percent of the 2014 primary were rejected because of a lack of S.B. 14 ID. Trial Tr. 101:16-103:4 (Sept. 10, 2014) (Hood) (ROA.100863-65). When a similar analysis was done for the constitutional amendment election of 2013 in nine of the ten largest counties in Texas—accounting for 53 percent of the total ballots cast—only .03 percent of ballots cast were rejected because of a lack of S.B. 14. *Id.* 103:20-105:14 (ROA.100865-67).[6]

50. There is no reason to believe, or record evidence to support a finding, that these small numbers represent eligible voters turned away, as opposed to the proper rejection of *in*eligible voters.

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[6] The Director of Elections in Texas testified that the day before his testimony, a special election was held in which over 43,000 ballots were cast. Trial Tr. 392:3-11 (Sept. 10, 2014) (Ingram) (ROA.101154). Of those, only 127 were provisional. *Id.* Although no analysis of the provisional ballots was done, even if all were eventually rejected for lack of an S.B. 14 ID, that would amount to only .2 percent of total ballots cast. *Id.*

51. Plaintiffs have previously asserted that S.B. 14 prevented "dozens of primarily Hispanic voters without S.B. 14 compliant photo ID" in Hidalgo County "from casting ballots during early voting and on Election Day" in November 2013. Pls.' Proposed Findings of Fact and Conclusions of Law ¶ 155 (ECF No. 610) (ROA.26508). There is no support for this assertion: Plaintiffs cited the testimony of Daniel Guzman, an Edcouch city council member who claimed to have been present at a polling place on Election Day. *See id.* (citing Trial Tr. 361:1-24, 363:8-364:1 (Sept. 4, 2014) (Guzman) (ROA.99593, 99595-96)). At trial, Plaintiffs attempted to elicit testimony from Mr. Guzman about what people had told them about their voting experience, but Mr. Guzman's response was properly excluded as hearsay. *See* Trial Tr. 362:7-364:15 (Sept. 4, 2014) (ROA.99594-96); *see also* DEF0014 (ROA.78119) (Feb. 7, 2014 Email from Yvonne Ramón, Elections Administrator for Hidalgo County, to Lindsey Cohan) (stating that no provisional ballots in Hidalgo County had been rejected for ID reasons). Plaintiffs presented no evidence that any eligible voter in Hidalgo County (or anywhere else) was unable to vote as a result of S.B. 14.

III. THE ORIGINS OF THE TEXAS LEGISLATURE'S INTEREST IN REQUIRING VOTERS TO IDENTIFY THEMSELVES VIA A PHOTO ID.

52. In 2000, a watershed moment occurred: citizens questioned the confidence they had in American electoral systems, in light of that year's hotly contested presidential election and Florida recount. *See, e.g., Bush v. Gore*, 531 U.S. 98 (2000) (per curiam). In the aftermath, a consensus developed that numerous changes needed to be made, including changes to address potential voter fraud. A common-sense way to prevent one form of potential fraud—impersonation—is to require identification. Thus, between 2001 and 2011, "nearly 1,000" voter ID "bills [were] introduced in a total of 46 states." DEF0053 at 5 (ROA.78671). While this was occurring, a significant majority of Americans expressed support for requiring a photo ID to vote. As one

would expect, when Voter ID became "a national issue" it also "became a political issue in the State of Texas." Smith Dep. 69:23-25 (ROA.68601).

A. The Contested Presidential Election of 2000.

53. The contested 2000 presidential election—with its recounts, hanging and dimpled chads, and ultimate resolution by the Supreme Court—began a nationwide focus on the integrity of the U.S. electoral system, including the prevention of voter fraud.

54. As Plaintiffs' expert, Dr. Minnite, observed, concerns about voter fraud "really c[a]me to the fore" following the 2000 election. Trial Tr. 131:16-18 (Sept. 8, 2014) (Minnite) (ROA.100125); *accord, e.g.*, DEF0035 at 2 (ROA.78417) ("In recent years, especially in the wake of the disputed 2000 presidential election, there has been much debate about imposing . . . new requirements for voter identification.").

55. As described in the 2001 report published by the National Commission on Federal Election Reform—a commission chaired by former Presidents Jimmy Carter and Gerald Ford—the 2000 election "shook American faith in the legitimacy of the democratic process." The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process* at 17 (Aug. 2001) ("Carter-Ford Commission Report"), http://web1.millercenter.org/commissions/comm_2001.pdf.

56. One of the primary concerns identified by the Carter-Ford Commission was that then-current procedures "let unqualified voters vote." Carter-Ford Commission Report at 17. An approach "favored by several Commissioners" as a way to combat such impropriety was

> to require those who are registering to vote and those who are casting their ballot to provide some form of official identification, *such as a photo ID issued by a government agency (e.g., a driver's license).* A photo ID is

> already required in many other transactions, such as check-cashing and using airline tickets. These Commissioners point out that those who register and vote should expect to identify themselves. *If they do not have photo identification then they should be issued such cards from the government* or have available alternative forms of official ID. They believe *this burden is reasonable, that voters will understand it, and that most democratic nations recognize this act as a valid means of protecting the sanctity of the franchise*.

Id. at 31 (emphasis added); *cf., e.g.*, *See* DEF0001 (Debate on S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. III, at 113:1-8 (March 23, 2011) (ROA.71567)) (Representative Aliseda: "I am a Mexican immigrant. I came to this country at the age of four and became a United States citizen at the age of 17. I want to show you what they use in Mexico to vote. This is a Mexican federally issued biometric. It has on the front a picture, on the back, a magnetic strip containing additional information, and a fingerprint."). In other words, the Carter-Ford Commission's report recommended what the Texas Legislature eventually enacted—a photo-voter ID law that included provisions for the State to issue free photo-voter IDs. There is no record of anyone ever accusing the Carter-Ford Commission of operating with a discriminatory purpose.

B. The Help America Vote Act

57. Responding to the recommendations of the Carter-Ford Commission, Congress enacted the Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666 (codified in scattered sections of 2, 5, 10, 36, and 42 U.S.C. § 15481), with broad bipartisan support. HAVA was intended to "change the system to make it easier to vote and tougher to cheat." 148 Cong. Rec. S10488 (2002) (statement of Senator Bond). The legislation's "twin goals [were] making it easier to vote and harder to corrupt our Federal election system." *Id.* at S710 (statement of Senator Dodd); *see also id.* S2527 (statement of Senator McCain) (HAVA "included provisions that would both

include mandatory Federal standards to make the election process easier for legitimate voters and prevent voter fraud.").

58. HAVA demonstrated, among other things, bipartisan recognition that safeguards to assure that the person casting a ballot is reliably identified as the individual registered are essential to any fair and honest election.

59. HAVA was an important signal to legislatures in the States, including Texas. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 261:16-21 (Jan. 25, 2011) (ROA.69493)); DEF0001 (Hearing on S.B. 14 Before the House Select Committee on Voter ID and Voter Fraud, 82d Leg., R.S., vol. I, 9:10-14 (Mar. 1, 2011) (ROA.70338)); *see also* Act of May 28, 2003, 78th Leg., R.S., ch. 1315. Indeed, discussions concerning "enacting" a "photo ID . . . voter identification requirement in Texas . . . began . . . around the same [time] as HAVA." McGeehan Dep. 81:4-9 (ROA.59010).

60. Among other things, HAVA Section 15483(a)(5)(A)(ii) was specifically included to address vote fraud, and provides minimum requirements for identification of voters who register by mail, including presentation of photographic identification. *See* Help America Vote Act of 2001, Hearing on H.R. 3295 Before the H. Comm. on the Judiciary, 107th Cong. (2001), available at 2001 WL 1552086 (statement of Representative F. James Sensenbrenner, Jr.) (identifying vote fraud as a significant motive behind HAVA's anti-fraud provisions); Remarks by President Bush at Signing of H.R. 3295, Help America Vote Act of 2002 (Oct. 29, 2002), 2002 WL 31415995, at *2.

61. HAVA provides that the relevant provisions "are minimum requirements," and must not "be construed to prevent a State from establishing election technology and administration requirements that are more strict than" provided in HAVA, "so

long as such State requirements are not inconsistent with the Federal requirements." 52 U.S.C. § 21084.

C. The Carter-Baker Commission on Federal Election Reform

62. Just before the 2004 election, a majority of American voters believed that "there was 'a lot' or 'some' fraud in U.S. elections." DEF0003 (The Commission on Federal Election Reform, *Building Confidence in U.S. Elections* at 49 n.60 (Sept. 2005) ("Carter-Baker Commission Report") (ROA.77881, 77908)). And after the election, "more than a quarter of Americans worried that" the presidential vote count was unfair. *Id.*

63. Following the 2004 election, a new commission was convened to succeed the Carter-Ford Commission. This commission was chaired by former President Carter and former Secretary of State James Baker.

64. The Carter-Baker Commission found that, although "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting, . . . both occur, and it could affect the outcome of a close election." Carter-Baker Commission Report at 18 (ROA.77850). The Commission went on to observe that "the perception of possible fraud contributes to low confidence in the system." *Id*. Therefore, the commission concluded,

> The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to *confirm the identity of voters*. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check.

Id. (emphasis added).

65. This sentiment was echoed by the Supreme Court the next year:

> A State indisputably has a compelling interest in preserving the integrity of its election process. Confidence in the integrity of our electoral

> processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (per curiam) (internal quotation marks and citation omitted).

66. The Carter-Baker Commission recommended that states require voters to prove their identities via a standardized secure photo ID. Carter-Baker Commission Report at 19. The Commission further recommended that states provide photo ID free of charge. *Id.* (ROA.77851).

67. Notably, the Carter-Baker Commission's bipartisan photo identification recommendation is more stringent than that imposed by S.B. 14, requiring validation of provisional ballots within 48 hours of an election (*id.* at 19 (ROA.77851)), as opposed to S.B. 14's six-day validation period (S.B. 14 § 18 (codified at Tex. Elec. Code § 65.0541)). There is no record of anyone ever accusing the Carter-Baker Commission of operating with a discriminatory purpose.

68. The Supreme Court in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), relied on the Carter-Baker Commission's report and recommendations in upholding Indiana's Voter ID law. The controlling opinion of the Court, authored by Justice Stevens, discussed the Carter-Baker report as authoritative, *id.* at 193-94, 197 (plurality opinion)[7]—as did Justice Breyer's dissenting opinion:

> Like Justice Stevens, I give weight to the fact that a national commission, chaired by former President Jimmy Carter and former Secretary of State James Baker, studied the issue and recommended that States should require voter photo IDs. See Report of the Commission on Federal Election Reform, Building Confidence in U.S. Elections § 2.5

[7] All further citations to *Crawford* will cite the controlling plurality opinion, unless otherwise indicated.

> (Sept.2005) (Carter-Baker Report), App. 136-144. Because the record does not discredit the Carter-Baker Report or suggest that Indiana is exceptional, I see nothing to prevent Indiana's Legislature (or a federal court considering the constitutionality of the statute) from taking account of the legislatively relevant facts the report sets forth and paying attention to its expert conclusions.

Crawford, 553 U.S. at 237-38 (Breyer, J., dissenting).

69. Participating in the *Crawford* case, the Department of Justice echoed much of what the Carter-Baker Commission found. In supporting Indiana's law, the federal government announced its view that "voting fraud impairs the right of legitimate voters to vote by diluting their votes—dilution being recognized to be an impairment of the right to vote"; that "[t]he State's interest in deterring voter fraud before it happens is evident from the monumental harm that can come from such fraud"; that alternatives to a photo ID, like "affidavits" and "utility bills" are not "as reliable as a photo ID"; and, therefore, that voter ID laws like Indiana's "serve[]" a "State's compelling interest in preserving the integrity of the electoral process." DEF0036 (Brief of United States as Amicus Curiae Supporting Respondents at 18-31, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25) (ROA.78469-82) (emphasis omitted; capitalization altered; quotation mark omitted)).

70. The Texas legislature was also influenced by the Carter-Baker Commission Report, as well as *Crawford* and *Purcell*. *See, e.g.*, Fraser Dep. 74:13-18 (ROA.61161), DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 26:2-27:13, 35:9-14 (Jan. 25, 2011) (ROA.69258-59, 69267)); DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 45:24-48:23 (Mar. 10, 2009) (ROA.72212-15)). In fact, requiring that voters prove their identity was only the latest in a series of reforms enacted by Texas to "improve and modernize election procedures" (*Crawford*, 553 U.S. at 191), many of which were recommended by the

Carter-Baker Commission's Report. *See* DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 312:13-313:7 (Mar. 10, 2009) (ROA.72490-91) (discussing provisional balloting and statewide voter registration database)); *see also, e.g.,* S.B. 14 § 24 (increasing funding for voter registration activities); *infra* FOF ¶¶ 104-111, 127, 137, 149, 187-188.

D. The Adoption of Voter ID Requirements by Other States

71. Following the recommendations of the Carter-Baker Commission, a number of States adopted election reforms including requirements that a voter provide photo identification before a ballot is counted. *See* DEF0053 at 4-5 (ROA.78670-71). States adopted a variety of approaches:

(1) In 2005, Georgia and Indiana adopted laws requiring that voters identify themselves via a photo ID.

(2) In 2006, Missouri and Ohio also adopted voter ID laws. Missouri's law was eventually invalidated on state constitutional grounds. Ohio's law did not mandate the use of photo ID.

(3) In 2009, Utah adopted a voter ID law, which did not mandate the use of photo ID.

(4) In 2010, voters in Oklahoma approved by referendum a law requiring voters to identify themselves via a photo ID.

(5) "Voter ID was the hottest topic of legislation in the field of elections in 2011, with legislation introduced in 34 states." That year, a number of states in addition to Texas adopted laws requiring voters to identify themselves via a photo ID: Kansas, South Carolina, Tennessee, South Carolina, and Wisconsin. In addition, the legislatures of Minnesota, Missouri, Montana, New Hampshire, and North Carolina also passed laws requiring voters to identify themselves via a photo ID, only to have those laws vetoed by their states' respective governors.

Id. at 4-19 (ROA.78670-85).

72. Unsurprisingly, no two voter ID laws are identical. *See id.* at 3 (ROA.78669) ("In half, the ID must include a photo of the voter; in the remaining half, non-photo

forms of ID are acceptable."). In early iterations, the Texas Legislature passed bills that allowed the use of photo and non-photo ID. Later, in crafting S.B. 14, the Texas Legislature was particularly influenced by the voter ID laws adopted in Georgia and Indiana. *See, e.g.*, DEF0387 (ROA.83664-78) (Senator Fraser's voter ID talking points).

73. Georgia's voter ID law requires voters to present one of the following forms of identification to vote: a Georgia driver's license; an identification card issued by any Georgia state entity or the United States; a valid United States passport; an employee identification card issued by any Georgia state entity, the United States, or a local political entity; a United States military identification; or a tribal identification card. *See* Ga. Code Ann. § 21-2-417(a). Like S.B. 14, Georgia law provides for free voter identification cards. *See id.* § 21-2-417.1(a). Georgia voters who fail to present the required identification may cast a provisional ballot, which will be counted if the voter presents identification to the voter registrar within three days of the election. *See id.* § 21-2-419(c)(1).

74. Before the preclearance coverage formula was invalidated by *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), the United States Department of Justice precleared Georgia's voter identification law after concluding that it complied with section 5 of the Voting Rights Act. *See Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1347 (11th Cir. 2009).

75. The proportion of minorities in Georgia was substantially the same as Texas. Fraser. Dep. 72:22-73:22 (ROA.63039-40); *see also* Dewhurst Dep. 193:8-21 (ROA.60401).

76. Indiana's voter ID law requires in-person voters to present identification that contains the person's name, photograph, and an expiration date. *See* Ind. Code. Ann.

§§ 3-5-2-40.5(a), 3-10-1-7.2(a). The identification must be issued by the State of Indiana or the United States, and it must be current or have expired after the most recent general election. *See id.* § 3-5-2-40.5(a). A voter who does not present qualifying identification may cast a provisional ballot, which will be counted if, within 10 days of the election, the voter provides proof of identification, attests to indigency, or attests to a religious objection to being photographed. *See id.* § 3-11.7-5-2.5(a)-(c).

77. The Supreme Court upheld Indiana's voter ID law against constitutional challenge. *See Crawford*, 553 U.S. 181. In doing so, the Court validated Indiana's underlying purposes in enacting a photo-voter ID law:

1) "[D]eterring and detecting voter fraud,"

2) "[P]articipating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient,"

3) Responding to the problem of "voter registration rolls include a large number of names of persons who are either deceased or no longer live in" the State, and

4) "[S]afeguarding voter confidence."

Id. at 191; *see also Veasey*, 830 F.3d at 249 ("*Crawford* clearly established that states have strong interests in preventing voter fraud and increasing voter confidence by safeguarding the integrity of elections.").

78. The Court also confirmed that HAVA shows "that Congress believes that photo identification is one effective method of establishing a voter's qualification to vote and that the integrity of elections is enhanced through improved technology," a conclusion also supported by the Carter-Baker Commission. *Crawford*, 553 U.S. at 193. The Court went on to brush aside any suggestion that a state must wait for definitive proof of a certain amount of in-person fraud before it can be justified in enacting a photo-voter ID requirement:

> There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, *the propriety of doing so is perfectly clear*.

Id. at 196 (emphasis added). Finally, the Court observed that "public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Id.* at 197. The Court concurred with the Carter-Baker Commission's conclusion that an "electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." *Id.* at 194 (quotation marks omitted).

E. Broad Public Support for a Voter-ID Requirement Throughout the Nation and Texas

79. Opponents maintained that voter ID was bad for voters and bad for Texas. The evidence—and the voters—said otherwise.

80. In the 2000s, support for laws requiring voters to present a photo ID in order to cast a ballot was consistently high.

81. In 2005, a poll of Americans showed that a clear majority of the country—57 percent—favored voter ID laws. DEF0001 (Tex. Leg., House Committee on Elections, 81st Leg., R.S., vol. II at 322:6-10 (Apr. 6, 2009) (ROA.74933)). In 2008, that support had increased to 67 percent, with a majority of Republicans, Democrats, whites, African-Americans, and other minorities supporting a photo ID requirement. DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 787:17-23 (Mar. 10, 2009) (ROA.72976); *see also id.* 338:14-16 (ROA.72516) (expert testimony before the Texas Senate that "it is clear from public opinion surveys that most Americans support requiring a photo ID in order to vote").

82. In fact, Plaintiffs' own expert, Dr. Ansolabehere, found that "persons who were asked to show identification when voting in 2006 were *even more supportive* of voter identification requirements than other respondents." DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7, at 8 (March 11, 2000) (ROA.73378) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007))) (emphasis added). Dr. Ansolabehere's conclusion in this paper is quite telling: "Voter identification is the controversy that isn't. . . . These findings undercut much of the heated rhetoric that has inflated the debate over voter identification requirements in the United States. . . . ID requirements in practice bear absolutely no resemblance to [past] discriminatory practices. This is simply not a case of voter intimidation." Ansolabehere, *supra*, at 9.

83. The story was the same in Texas. In 2010, 86 percent of Texans—including majorities of both Republicans and Democrats—supported requiring voters to prove their identities via photo ID. DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 27:14-18 (Jan. 25, 2011) (ROA.69259)).

84. A Fall 2010 Lighthouse Poll found that 82 percent of African-Americans and 83 percent of Hispanics favored "requiring a valid photo ID before a person is allowed to vote." DEF0004 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., Exhibit 8 (Jan. 25, 2011) (ROA.77940)).

85. In February 2011, that support remained "overwhelming." Ross Ramsey, *UT/TT Poll: Texans Are Ready to Roll the Dice*, Texas Tribune (Feb. 23, 2011) (cited at Trial Tr. 401:25-402:24 (Sept. 10, 2011) (Fraser) (ROA.101163-64)), https://www.texastribune.org/2011/02/23/uttt-poll-texans-are-ready-to-roll-the-dice. According to this poll, 75 percent of Texans supported a photo voter ID law. A majority

of Latinos (68%), African-Americans (63%), and Democrats (58%) favored a photo-voter-ID law. DEF0723 (ROA.87386-88).

86. Legislative opponents of S.B. 14 did not cite any polling to the contrary. *Cf.* Trial Tr. 277:11-16 (Sept. 10, 2014) (Patrick) (ROA.101039) ("Very often, if we have a contentious issue, where—not the . . . legislators . . . but the citizens . . . are divided on an issue, they show up at the Capitol and rally for and against. . . . I don't recall anyone.").

87. Then-Senator Dan Patrick recalled that support for S.B. 14 among Texas voters was overwhelming based on "all the people I had talked to over a period of time" and "looking at all the polls." Trial Tr. 277:7-9, 278:1 (Sept. 10, 2014) (Patrick) (ROA.101039); *id.* at 276:4-8 (ROA.101038) ("[I]t seems to me I remember a number where 96 percent of the Republicans and 74 percent of Democrats supported . . . photo voter ID.").

88. The strength—and electoral power—of this growing support was reflected in the voting patterns for voter ID in the Texas House of Representatives. Two *Democratic* members of the Texas House—Representatives Craig Eiland and Joe Pickett—who voted against voter ID in the 2005 and 2007 sessions switched their positions the next time the issue made it to a vote in 2011, voting in favor of S.B. 14. *Compare* H.J of Tex., 79th Leg., R.S., 2254-55 (May 3, 2005) (ROA.77781-82), *and* H.J. of Tex., 80th Leg., R.S., 2246 (Apr. 24, 2007) (ROA.76888), *with* H.J. of Tex., 82d Leg., R.S., 4054-55 (May 16, 2011) (ROA.71968-69); *see also* DEF0044 (ROA.78642-47) (listing party affiliation of members of the House in 2011).

89. Particularly relevant to S.B. 14, support for a photo ID requirement was most fervent among Republican primary voters. Plaintiffs' own witness described the pressure on Republican legislators in Texas:

> Q: Was there pressure on members of the legislature in 2011 to vote for Senate Bill 14?
>
> A: Oh, enormous.
>
> Q: How would a member of the legislature know that they, you know, needed to look real hard in supporting this bill or they might face consequences?
>
> A: There was pressure from political action committees. There was pressure from the Republican Party. This pressure can come in a number of different ways and this is not uncommon in lobbying. I mean, this—you know, you can be told that if you don't vote for a particular bill, in this case, Senate Bill 14, that this political group is going to find you an opponent and finance them and they have done that.
>
> Q: Did that, in fact, happen to some members in 2009 that either opposed the measure or weren't diligent enough in getting it passed?
>
> A: Todd Smith was chairman of the Elections Committee in the House, I believe, in 2009 and—it might have been 2007. I'm not sure about that but I know this. He didn't get the bill out of committee. That drew him an opponent and a bunch of money against him . . . .

Trial Tr. 207:2-22 (Sept. 3, 2014) (Wood) (ROA.99139).

90. Testimony from Representative Smith confirmed that legislators feared that their constituents would have voted them out of office if a voter-ID law were not enacted. He testified that "continu[ing] demand from the grassroots that this bill be passed" was "building political pressure." Trial Tr. 325:12-14 (Sept. 8, 2014) (Smith) (ROA.100319). He further testified that

> I think everybody understands why non-photo ID was taken out of Senate Bill 362 [in 2009] because it was just a demand by our constituents that we require a photo ID in order for people to vote and they were very cynical about the notion of allowing non-photo IDs . . .. [M]y [primary] opponent used [my support for non-photo ID] against me in the most recent election politically without mentioning that he too had voted for that same version of the bill. So this notion of letting people vote with their library cards feeds the perception that you're in favor of liberal laws allowing people to vote even under circumstances where they were not legally entitled to do so.

Id. 339:10-22 (ROA.100333). Putting it in exaggerated terms, Representative Smith said that that "every Republican member of the legislature would have been lynched if" S.B. 14 "had not passed." *Id.* 340:1-3 (ROA.100334).

91. As Senator Davis—an opponent of S.B. 14—conceded, "members of the Texas legislature have a duty to represent their constituents"; it is "an important duty of any elected official to represent constituents and represent policy that constituents favor"; and there is nothing "wrong with a representative voting for a policy that's favored by his or her constituents." Trial Tr. 39:7-18 (Sept. 5, 2014) (Davis) (ROA.99656).

92. The importance of Republican grassroots pressure was reflected in the voting patterns for voter ID in the Texas House. Three members of the Texas House—Representatives Chuck Hopson, Aaron Peña, Jr., and Allan Ritter—who opposed voter ID in 2005 and 2007 when they were Democrats, switched parties in 2011 and as Republicans voted for S.B. 14. *Compare* H.J. of Tex., 79th Leg., R.S. 2254-55 (May 3, 2005) (ROA.77781-82), H.J. of Tex., 80th Leg., R.S., 2246 (Apr. 24, 2007) (ROA.76888), *and* DEF0041 (ROA.78622-28) (listing party affiliation of members of the House in 2005), DEF0042 (ROA.78629-34) (listing party affiliation of members of the House in 2007), *with* H.J. of Tex., 82d Leg., R.S., 4054-55 (May 16, 2011) (ROA.71968-69), *and* DEF0044 (ROA.78642-47) (listing party affiliation of members of the House in 2011).

IV. THE LONG LEGISLATIVE ROAD TO S.B. 14

93. The Texas Legislature meets every two years, with each regular session lasting only 140 days from January until May. *See* Trial Tr. 160:3, 173:12 (Sept. 5, 2014)

(Ellis) (ROA.99777, 99790). The Governor may call a special legislative session following the conclusion of the regular session. *See id.* 357:2-13 (Sept. 5, 2014) (Anchia) (ROA.99974).

94. S.B. 14 was not the first bill considered by the Texas Legislature that sought to establish a system for verifying that voters are who they claim to be. To understand why S.B. 14 included the provisions that did, and to understand why the Texas Legislature used the legislative procedures that it did in enacting S.B. 14, one must look to events that preceded the 2011 legislative session.

95. S.B. 14 was enacted after *more than six years* of debate and consideration by the Texas Legislature of whether voters should be required to prove their identity with a photo ID.

96. The legislative record for consideration of voter ID during those six years encompasses *more than 4,500 pages* of transcripts and hundreds of pages of exhibits and written testimony. *See* DEF0001-02 (ROA.68878-77825) (legislative histories of S.B. 14, S.B. 362, H.B. 218, and H.B. 1706). Few laws have received more deliberation.

97. During the nationwide push to ensure the integrity of elections, the Texas Legislature, like those in many other States, sought to enact voter ID legislation in addition to many other laws to modernize elections. At first, Republicans in the Texas Legislature looked to compromise with Democrats on the ID issue, offering bills that would have allowed a certain photo and non-photo IDs be used, despite the preferences of Republican legislator and primary voters for a photo requirement. When it became clear that Democrats were not interested in compromise, and after Republicans had obtained overwhelming majorities in both Houses of the Texas Legislature, Republicans chose to pursue the preferences of those who had voted them into office—

and who could vote them out. The result was S.B. 14's photo ID requirement for many voters.

98. Rather than compromise, Democrats manipulated procedural rules in an effort to thwart the will of the majority of Texans and the majority of the Texas Legislature. After enduring years of this intransigence through three legislative sessions (2005, 2007, and 2009), Republicans in 2011 used procedural rules to ensure that a photo-voter-ID bill would get an up-or-down vote. As then-Senator Patrick explained, "they used the rules to stop the bill and we used the rules to pass the bill." Trial Tr. 286:9-10 (Sept. 10, 2014) (Patrick) (ROA.101048).

99. In addition, opponents who had no intention of supporting any voter ID law repeatedly offered amendments they knew would fail solely in order to build a favorable record for this lawsuit. *See* Trial Tr. 172:7 (Sept. 5, 2014) (Ellis) (ROA.99789) (acknowledging that amendments were offered just to "make a point"), 203:10-21 (ROA.99820) (discussing email from Ellis's Chief of Staff referring to plan to use the expected vote against an Ellis amendment in future legal proceedings against S.B. 14); *see also* DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 102:21-22 (March 10, 2009) (ROA.72269)) (Democratic Senator Zaffirini suggesting that those who oppose voter ID were "making a record . . . because a lawsuit is expected"). Nonetheless, those who supported voter ID did adopt a number of Democratic amendments to S.B. 14 in order to address some concerns raised by the opposition.

A. In the 2001 Legislative Session, a Democrat Introduces the First Voter-ID Bill Following the 2000 Election.

100. At the beginning of the legislative session that followed the 2000 presidential election, Representative Tracy King, a Democrat, introduced H.B. 744, "AN ACT relating to requiring to requiring a voter to present proof of identification." Tex. H.B. 744, 77th Leg., R.S. (2001); *see also* DEF0041 at 4 (ROA.78625) (showing that Tracy King was a Democrat in 2001).[8]

101. If adopted, the bill would have required voters to prove their identity in order to vote. Tex. H.B. 744 § 1(b), 77th Leg., R.S. (2001).

102. The list of acceptable identification included photo and non-photo ID. *Id.*

103. The bill was referred to the Elections Committee, but no further action was taken. *See* History of H.B. 744, Texas Legislature Online, http://www.capitol.state.tx.us/BillLookup/history.aspx?LegSess=77R&Bill=HB744 (last visited Nov. 18, 2016).

104. Although Representative King's bill was not enacted, other laws inspired by the 2000 election were enacted. For example, H.B. 1419 required the Secretary of State to conduct a study of voting systems, technologies, and strategies; H.B. 1856 prohibited, among other things, the new acquisition or adoption of a voting system that uses a punch-card ballot or similar form of tabulating card and established procedures for the use of electronic voting machines; H.B. 2922 established a toll-free telephone number to allow a person to report an existing or potential abuse of voting

[8] The contents, history, and authors of state legislation "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned," and are therefore subject to judicial notice. Fed. R. Evid. 201(b)(2); *see, e.g.*, *Crawford*, 553 U.S. at 199 (plurality op.) (considering judicially noticeable facts when evaluating Indiana's voter ID law).

rights; and H.B. 3181 established various procedures to ensure accurate voter rolls. H.B. 1419, Act of May 15, 2001, 77th Leg., R.S., ch. 500, 2001 Tex. Gen. Laws 950; H.B. 1856, Act of May 17, 2001, 77th Leg., R.S., ch. 1054, 2001 Tex. Gen. Laws 2329; H.B. 2922, Act of May 15, 2001, 77th Leg., R.S., ch. 556, § 1(a), 2001 Tex. Gen. Laws 1074; H.B. 3181, Act of May 28, 2001, 77th Leg., R.S., ch. 1178, § 1, 2001 Tex. Gen. Laws 2647.

B. In the 2003 Legislative Session, the Texas Legislature Enacts Various Laws that Continue to Strengthen and Modernize Texas's Electoral System—Including a Bill that Addresses Mail-in Ballot Fraud in Various Ways.

105. In the 2002 election, Republicans took control of the Texas House for the first time since Reconstruction and thus controlled both houses of the State Legislature and all major state offices. Section 5 Trial Tr. 56:21-24 (July 10, 2012) (Kousser) (ROA.66447). In the next legislative session, in 2003, the Texas Legislature adopted numerous laws aimed at strengthening Texas's electoral system.

106. H.B. 54, for example, addressed mail-in ballot fraud in various ways. For example:

1) The law defined, by means of specific examples, conduct that constitutes assisting the voter while the person providing the assistance is in the presence of the voter's ballot or state-issued carrier envelope.

2) The law expanded the offense of illegal voting to include knowingly marking or attempting to mark another person's ballot without that person's consent.

3) The law expanded the offense of unlawfully assisting a voter to include preparing a voter's ballot without direction from the voter and providing assistance to a voter who either has not requested assistance or has not designated that person to provide the assistance.

4) The law prohibited anyone from possessing another person's ballot or carrier envelope without appropriate authority.

5) The law prohibited the acceptance of carrier envelopes originating from an office of a political party or candidate

6) The law made it a state jail felony for anyone to buy, offer to buy, sell, or offer to sell an official ballot, ballot envelope, carrier envelope, signed application for an early-voting mail ballot, or any other election record.

7) The law made it a Class B misdemeanor for a voter to sell his or her ballot.

Act of May 26, 2003, 78th Leg., R.S., ch. 393, 2003 Tex. Gen. Laws 1633.

107. H.B. 402 established a pilot program to evaluate the use of an electronic registration system to confirm a voter's registration when the voter appears in person to vote. Act of May 28, 2003, 78th Leg., R.S., ch. 1012, 2003 Tex. Gen. Laws 2955.

108. H.B. 1549 amended provisions of the Election Code to bring Texas into compliance with HAVA. Among other things, it strengthened identification requirements by removing preprinted checks containing the person's name from the list of acceptable documentation under then-current section 63.0101 and adding to the list a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Act of May 27, 2003, 78th Leg., R.S., ch. 1315, §§ 25, 27, 2003 Tex. Gen. Laws 4819, 4824-25.

109. H.B. 1695, among other things, sought to enhance the integrity of Texas's voter rolls by requiring registered voters who have been excused from jury service on the basis of not being U.S. citizens to provide proof of U.S. citizenship to their local registrar. Act of May 28, 2003, 78th Leg., R.S., ch. 1316, § 9, 2003 Tex. Gen. Laws 4832, 4834.

110. H.B. 2085 increased the availability of Spanish-speaking election clerks. Act of May 28, 2003, 78th Leg., R.S., ch. 638, § 1, 2003 Tex. Gen. Laws 2043.

111. S.B. 196 made it more difficult to challenge another person's voter registration, requiring a sworn statement of the grounds for the challenge that identifies the voter whose registration is being challenged and that states a specific qualification for registration that the challenged voter has not met, based on personal knowledge of the voter making the challenge. Act of May 24, 2003, 78th Leg., R.S., ch. 1165, § 1, 2003 Tex. Gen. Laws 3306.

C. In the 2005 Legislative Session, a Voter ID Bill Is Pressed by Republicans and Blocked by Democrats in the Senate.

112. Following up on their modernization of Texas's electoral system in the 2003 session—including efforts to prevent mail-in ballot fraud—the Texas Legislature sought to enact a voter ID law (H.B. 1706) of the sort recommended by the Carter-Ford and Carter-Baker Commissions in order to prevent in-person voter fraud.

113. While 11 States required voter ID in 2001, that number grew to 24 in 2005. DEF0003, Carter-Baker Commission Report, at 18 (ROA.77850). And in 2005, bills to introduce or strengthen voter ID requirements were under consideration in 11 other States in addition to Texas. *Id.*

114. H.B. 1706, like H.B. 744 in 2001, allowed photo and non-photo IDs. Tex. H.B. 1706, 79th Leg., R.S. (2005).

115. At the same time, Indiana and Georgia were enacting photo-only voter ID laws. *See supra*, Findings of Fact ("FOF") ¶¶ 71-78.

116. Like several of the election laws enacted in the 2003 session, H.B. 1706 was introduced with the expressly stated purpose of preventing voter fraud and enhancing the integrity of elections. *See, e.g.*, DEF0002 (Debate on Tex. H.B. 1706 on the

Floor of the House, 79th Leg., R.S., 2:4-9, 9:22-10:1, 19:17-21, 46:14-21 (May 2, 2005) (ROA.77446, 77453, 77463, 77490)).

117. Notwithstanding H.B. 1706's provisions allowing the use of non-photo ID and its similarity to previous legislation supported by Democrats, Democrats viewed H.B. 1706 "very suspiciously" and "there was . . . an instant reaction" in opposition to the legislation. Trial Tr. 101:2-5 (Sept. 2, 2014) (Martinez Fischer) (ROA.98733).

118. Democrats immediately took a "defensive perspective," looking for procedural mechanisms to block the will of the majority. *Id.* 101:2-102:12 (ROA.98733-34).

119. The Texas House passed H.B. 1706 on May 3, 2005. H.J. of Tex., 79th Leg., R.S., 2554-55 (2005) (ROA.77781-82).

120. Confirming that voter ID was becoming a politicized issue for Democratic legislators, Representative King voted against H.B. 1706—notwithstanding its similarity to the bill he had sponsored four years earlier (H.B. 744 in the 2001 session). *See id.*; *supra*, FOF ¶¶ 100-102.

121. Democrats in the Texas Senate vowed to use that chamber's then-existing "two-thirds rule"—a rule that effectively prevented consideration of bills in the absence of the suspension of the regular order of business in the Senate, which required the assent of two-thirds of present Senators—to block the bill. Davidson Corrected Rpt. ¶ 12 (ROA.102468-69).

122. The two-thirds rule had been a legislative calendar-management tool utilized through the discretion of the Lieutenant Governor, committee members, and other Senators to control the flow of legislation to the Senate floor and to manage the day-to-day operations of the Senate. Trial Tr. 166:1-3 (Sept. 5, 2014) (Ellis) (ROA.99783), *id.* 261:17-262:22 (Sept. 10, 2014) (Patrick) (ROA.101023-24). The two-thirds rule

originated in the 1950s, when Democrats overwhelmingly controlled both houses of the Texas Legislature. *See id.* 261:17-265:5 (Sept. 10, 2014) (Patrick) (ROA.101023-24). It was designed to prevent *intra*-party squabbling, foster an orderly consideration of competing priorities, and prevent legislators from having to go on the record with tough votes. *See id.* In other words, its purpose was to promote comity *within the Democratic Party*, not between Republicans and Democrats. *See id.* The two-thirds rule was never intended to give the minority party in the Texas Senate veto power over bills supported unanimously by the majority party. *See* Dewhurst Dep. 161:21-23 (ROA.60393); Trial Tr. 264:16-265:22 (Sept. 10, 2014) (Patrick) (ROA.101026-27).

123. Because of its limited purpose, there were "various ways to work around" the two-thirds rule if it was abused. Trial Tr. 267:4-5 (Sept. 10, 2014) (Patrick) (ROA.101029). For the two-thirds rule to operate, a "blocker bill" must be introduced and passed through committee as quickly as possible, putting it at the top of the Senate's calendar, and the Senate must not pass the bill. *See* Trial Tr. 216:5-24 (Sept. 4, 2014) (Uresti) (ROA.99448); *id.* 263:21-264:7 (Sept. 10, 2014) (Patrick) (ROA.101025-26). It then takes a two-thirds vote to consider a bill out of order, that is, to consider a bill before the blocker bill is considered. Whether a blocker bill is considered, however, is at the discretion of the Lieutenant Governor, who decides when and where to refer bills. Dewhurst Dep. 26:15-25, 31:10-13 (ROA.60359-60). The blocker bill must also be passed out of committee, and whether a blocker bill makes it out of committee is obviously up to that committee, which could refuse to pass it out. And, finally, there must be the assent of the majority of the Senate for the two-thirds rule to operate because (1) the Senate rules are determined by majority vote, and (2) if the Senate passes the blocker bill, then the two-thirds rule would no longer be operative. *See* Trial Tr. 263:17-21 (Sept. 10, 2014) (Patrick) (ROA.101025); Dewhurst Dep. 79:23-80:8, 161:9-16 (ROA.60372, 60393).

124. When the minority party had previously sought to thwart the will of the majority—Democrat or Republican—on priority legislation, the two-thirds rule was repeatedly abandoned:

> [T]he legislative history of the Texas Senate is replete with the example after example, since World War II, of Lieutenant Governors abandoning the two-thirds rule during regular session to pass bills they wanted to pass and then putting [blocker] bills back in to recreate the two-thirds rule.
>
> ***
>
> [T]he last 30 or 40 years has numerous cases where Lieutenant Governors . . . passed the Blocker Bill, meaning there was no bill in front, there was no requirement to suspend the rules in order to – or to suspend the rules in order to move a bill forward – had done that many times.
>
> ***
>
> [I]t was a practice that was used to pass bills the Lieutenant Governor wanted to and where a small minority did not want to pass it.

Dewhurst Dep. 160:1-161:23 (ROA.60392-93); *accord, e.g.*, Trial Tr. 266:23-267:8 (Sept. 10, 2014) (Patrick) (ROA.101028-29) ("A: . . . [D]uring special sessions—and we've had 15 special sessions, I think is the number, I could be one or two off, in the last decade or so—we don't use the 21-vote rule. So on the special sessions we don't use the 21-vote rule. And on occasion in regular sessions—in regular session it's been set aside or—there are various ways to work around it, so it's—it's not unprecedented. Q: But it's not unusual in regular sessions? A: It's not unusual, but it's not unprecedented either."); Dewhurst Dep. 109:1-6 (ROA.60380) ("I frequently did not recognize the two-thirds rule during special sessions. . . . [I]n June 2011, I did not have a blocker bill, meaning, we passed all the legislation on the call with a simple majority."); *Session v. Perry*, 298 F. Supp. 2d 451, 458 (E.D. Tex. 2004) ("To break the impasse [on redistricting], Lieutenant Governor Dewhurst announced that he would suspend operation of the two-thirds rule in any future special session considering congressional

redistricting legislation."), *vacated sub nom. on other grounds*, *Henderson v. Perry*, 543 U.S. 941 (2004).[9] In fact, after the passage of S.B. 14 in 2011, the two-thirds rule was again abandoned so that the Senate could pass a budget, among other bills. *See, e.g.*, Dewhurst Dep. 109:18-110:23 (ROA.60380); S.J. of Tex., 82d Leg., 1st C.S., 1563 (2011).

125. The Texas Senate has since abandoned the two-thirds rule entirely. *See* Tex. S. Rule 5.13, S. Res. 39 § 5(c), 84th Leg., R.S., 2015 S.J. of Tex. 47, 50-51, *reprinted in* Rules of the Senate, Texas Legislative Manual 27 (2015).

126. But in the 2005 legislative session, with the Democrats' threatened use of the two-thirds rule looming, H.B. 1706 died in the Senate. Davidson Corrected Rpt. at ¶ 13 (ROA.102469).

127. Although unable to enact voter ID legislation, the Texas Legislature was able to continue its efforts to modernize and secure Texas's electoral system in other ways. For example, H.B. 56 made it a felony to tamper with a voting machine; H.B. 178 authorized election officers to access electronically readable information on a driver's license or a personal identification card when determining whether to accept a person for voting; and H.B. 2280, among other things, required the Secretary of State to prescribe a uniform system for assigning voter registration numbers, authorized a voter who continues to reside in the same county to correct incorrect or outdated information on his or her voter registration card by digital transmission, required the Secretary of State to prescribe procedures to ensure that when a voter registers in an-

[9] In *Session*, Democrats similarly tried to overcome legislative defeat by resort to charges of racism. The *Session* Court properly rejected plaintiffs' claim that Texas had enacted its redistricting plan with a discriminatory purpose. 298 F. Supp. 2d at 469-73.

other county the statewide computerized voter list is updated to reflect the registration in the new county, and makes other changes relating to the frequency and timing of periodic updates to voter registration data. H.B. 56, Act of May 23, 2005, 79th Leg., R.S., ch. 470, 2005 Tex. Gen. Laws 1329 (codified at Tex. Penal Code § 33.05); H.B. 178, Act of May 27, 2005, 79th Leg., R.S., ch. 1189, 2005 Tex. Gen. Laws 3903 (codified at Tex. Elec. Code § 63.0102 and Tex. Transp. Code § 521.126(d)(5)); H.B. 2280, Act of May 25, 2005, 79th Leg., R.S., ch. 1105, 2005 Tex. Gen. Laws 3666 (codified at Tex. Elec. Code §§ 13.072(a), 13.141, 15.021(d)-(f), 16.001(c), 16.003, 18.041, 18.061, 20.065(b)-(c), 20.066)).

D. In the 2007 Legislative Session, Democrats Get an Extraordinary Concession, Which They Use to Kill the Voter-ID Bill.

128. The 2007 Legislative Session saw the one truly radical departure from the ordinary procedural sequence in the entire record: Lieutenant Governor Dewhurst gave the Democrats a do-over after the voter-ID bill had passed the Senate. The Democrats took advantage of that unheard-of courtesy by killing the bill.

129. While the Democrats were blocking H.B. 1706 in the 2005 legislative session, Georgia and Indiana both enacted voter ID laws that each required voters to present a photo ID. *See supra*, FOF ¶¶ 71-78. The Department of Justice precleared Georgia's law under the Voting Rights Act. *See Billups*, 554 F.3d at 1347. In addition, the Carter-Baker Commission had released its report examining the 2004 election, which recommended that a secure photo ID be required for voting. *See supra*, FOF ¶¶ 62-70.

130. Following this lead, the Texas Legislature in 2007 again attempted to adopt a voter ID bill. The proposed law allowed certain photo ID and two forms of non-photo ID. Tex. H.B. 218, 80th Leg., R.S. (2007).

131. Just like H.B. 1706 in 2005, the express purpose of H.B. 218 was to help prevent voter fraud and increase public confidence in elections. *See, e.g.*, DEF0002 (Debate on Tex. H.B. 218 on the Floor of the House, 80th Leg., R.S., vol. I at 2:7-4:11, 8:20-9:5 (ROA.76456-58, 76462-43)).

132. Prior to the 2007 legislative session, then-Lieutenant Governor Dewhurst had numerous conversations with Democrats and believed that a version of a voter ID law could pass with bipartisan support. Trial Tr. 41:19-43:6 (Sept. 10, 2014) (Dewhurst) (ROA.100803-05).

133. Lieutenant Governor Dewhurst turned out to be incorrect. Just like H.B. 1706 before it, H.B. 218 was passed in the House and died in the Senate with Democrats blocking the bill through the Senate's two-thirds rule. In fact, before the Senate could consider H.B. 218, Senate Democrats sent a letter to Lieutenant Governor Dewhurst informing him "that they would vote against any procedural motion to" even "debate voter ID legislation." Davidson Corrected Rpt. ¶ 20 (ROA.102473).

134. First, however, proponents of H.B. 218 in the Senate attempted to thwart the Democrats' abuse of the two-thirds rule by using the "common legislative practice" of "mov[ing] your bill when you have the votes on the floor"—*i.e.*, when opponents were absent from the floor, thereby making it easier to achieve two-thirds' support. Trial Tr. 15:4-6 (Sept. 10, 2014) (Dewhurst) (ROA.100777). This was not a departure from normal legislative procedure. *See id.* 15:7-9 (ROA.100777) (this occurs "monthly" during a legislative session). At the time, there were 19 Republicans and 9 Democrats on the floor. *See* DEF0002 (Debate on Tex. H.B. 218 on the Floor of the Senate, 80th

Leg., R.S., 12:12-13:1 (May 15, 2007) (ROA.77187-88)). And by a vote of 19-9, H.B. 218 received the necessary two-thirds support. *Id.*[10]

135. Senator Whitmire, a Democrat, was absent when the vote was taken. When he returned, he protested (*see id.* 14:3-15:9 (ROA.77189-90)).[11] Lt. Gov. Dewhurst, "knowing that this [was] an important bill to the Democrats," "bent over backwards to respect" the opposition, and allowed another vote. On the second vote, Democrats blocked H.B. 218 from coming up for a vote. Dewhurst Dep. 48:23-49:19 (ROA.60365).

136. Lieutenant Governor Dewhurst's allowance of a re-vote was an extraordinary concession by the majority party, and an extraordinary departure from normal procedures that benefited the Democrats in the Senate. As then-Senator Patrick explained:

> We passed the bill. Senator Whitmire objected and—and said that he was in the restroom and was not aware of the vote and—and protested. And there was another Democrat who was not there that day. And the protest went—and the protest went on quite a while from Senator Whitmire, that it wasn't right, it wasn't fair, it was an important bill, he should have been able to vote.
>
> And so the lieutenant governor, David Dewhurst at the time, said, "Okay, we'll—we'll have another vote." Not everyone agreed with that, but we respected his decision.
>
> I've never seen in my entire time of over 16,000 votes a vote be—the gavel—the gavel come down—bless you—the gavel come down and a senator complain and a—and the lieutenant governor give them a mulligan. I've never seen that. But the lieutenant governor did.

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[10] Plaintiffs' expert, Dr. Davidson, incorrectly characterized this as a "change" of "the two-thirds rule." Davidson Corrected Rpt. ¶ 22 (ROA.102475).

[11] Plaintiffs suggest that this vote was taking advantage of Senators Uresti and Gallegos absence due to illness. *See* Davidson Corrected Rpt. ¶ 22 (ROA.102475). As the record demonstrates, however, it was *Senator Whitmire*'s absence that provided the opportunity to allow for consideration H.B. 218.

Trial Tr. 280:6-23 (Sept. 10, 2014) (Patrick) (ROA.101042). Because the Lieutenant Governor "bent over backwards" to accommodate the Democrats, the Democrats were able to kill the bill.

137. Although unable to enact voter-ID legislation, the Texas Legislature was able to continue its efforts to modernize and secure Texas's electoral system in other ways. For example, H.B. 1921 prohibited the use of wireless communication devices as well as any mechanical or electronic means of recording images and sounds in polling places; H.B. 1987 addressed prosecutions for mail-in ballot fraud; and S.B. 90 established a pilot program to evaluate the use of electronic mail to provide a ballot to military personnel who are voting from overseas. H.B. 1921, Act of May 23, 2007, 80th Leg., R.S., ch. 697, 2007 Tex. Gen. Laws 1323 (codified at Tex. Elec. Code § 61.013); H.B. 1987, Act of May 14, 2007, 80th Leg., R.S., ch. 238, 2007 Tex. Gen. Laws 347 (codified at Tex. Elec. Code § 86.006(f), (i)); S.B. 90, Act of Apr. 12, 2007, 80th Leg., R.S., ch. 6, 2007 Tex. Gen. Laws 6, 6-7.

E. In the 2009 Legislative Session, the Senate Sets Aside the Two-Thirds Rule to Pass a Voter ID Law, but the Bill is "Chubbed to Death" by Democrats in the House.

138. Following the demise of H.B. 1706 in the 2007 legislative session, the Supreme Court upheld Indiana's photo-voter ID law against a constitutional challenge. *See Crawford*, 553 U.S. 181. In doing so, the Court validated Indiana's underlying purposes in enacting a photo-voter ID law:

1) "[D]eterring and detecting voter fraud,"

2) "[P]articipating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient,"

3) Responding to the problem of "voter registration rolls include a large number of names of persons who are either deceased or no longer live in" the State, and

4) "[S]afeguarding voter confidence."

Id. at 191 (plurality op.). The Court also confirmed that HAVA shows "that Congress believes that photo identification is one effective method of establishing a voter's qualification to vote and that the integrity of elections is enhanced through improved technology," a conclusion also supported by the Carter-Baker Commission. *Id.* at 193. The Supreme Court went on to brush aside any suggestion that a state must wait for definitive proof of a certain amount of in-person fraud before it can be justified in enacting a photo-voter ID requirement:

> There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, *the propriety of doing so is perfectly clear*.

Id. at 196 (emphasis added). Finally, the Court observed that "public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Id.* at 197. The Court concurred with the Carter-Baker Commission's conclusion that an "electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." *Id.* at 194 (quotation marks omitted).

139. Bolstered by *Crawford*, the Texas Legislature continued in its efforts to prevent voter fraud and increase public confidence in elections.

140. Senator Fraser introduced S.B. 362, which was designed as a compromise bill that was more lax than the Indiana law upheld by the Supreme Court because it provided for the use of certain non-photo ID. *See* Dewhurst Dep. 69:12-71:12 (ROA.60370), Davidson Corrected Rpt. ¶ 28 (ROA.102478). This bill was proposed—

despite the preferences of many Republicans for a photo-voter-ID law—as another attempt at compromising with voter ID opponents. *See* Dewhurst Dep. 61:5-64:10 (ROA.60638); McCoy Dep. 74:10-75:10 (ROA.61557).

141. In 2009, with voter ID legislation having been under active consideration for four years in the previous two legislatives sessions—and with no end to Democratic intransigence in sight—Republicans in the Senate followed decades of precedent and set aside the two-thirds rule for consideration of this priority legislation, by designating it a special calendar item. *See* Davidson Corrected Rpt. ¶ 25 (ROA.102476); *see also* Trial Tr. 263:17-21 (Sept. 10, 2014) (Patrick) (ROA.101025) ("[E]very year we vote on the rules. The senators, Democrats and Republican, we get in a room and we all vote—and we vote all the rules. We can vote any rule we want."). Republicans did so because they considered the way Democrats were using the two-third rule an abuse of procedure. *See* Trial Tr. 284:18-285:24 (Sept. 10, 2014) (Patrick) (ROA.101046-47).

142. Notwithstanding that the voter ID issue had been under active debate for four years including in the previous two legislative sessions, the Senate held a 23-hour hearing on the topic. Davidson Corrected Rpt. ¶ 32 (ROA.102480). The hearing was held in the Committee of the Whole, which involved the entire Senate. Using the Committee of the Whole to hold a hearing rather than a smaller a committee "is a relatively common tool where you have a lot of information" that needs to be disseminated to the entire Senate. Trial Tr. 13:18-22 (Sept. 10, 2014) (ROA.100775) (Dewhurst). In the Committee of the Whole, any Senator may introduce evidence and any Senator may question witnesses. Trial Tr. 36:9-12 (Sept. 5, 2014) (ROA.99653) (Davis).

143. Because the two-thirds rule was set aside, a voter ID law was finally able to receive an up-or-down vote in Senate; S.B. 362 was passed by the Senate by a 19-to-12 margin. S.J. of Tex., 81st Leg., R.S. 589 (2009).

144. In the House, the Republican leadership undertook great efforts to try to compromise with Democrats on this issue. *See* Davidson Corrected Rpt. ¶¶ 25, 33 (ROA.102476; ROA.102480-81). The Chair of the House Elections Committee, Representative Todd Smith, sought to increase the variety of acceptable identification, provide a $7.5 million fund for voter registration, and delay implementation of the ID requirement for four years. *Id.* ¶¶ 33, 35 (ROA.102480-81, ROA.102482). The Republican leadership made these offers of compromise despite the growing demand among their constituents for a photo-ID requirement. *See id.* ¶ 35 (ROA.102482).

145. House Democrats refused to negotiate. In response to Republican House legislators' attempts at further compromise to reach an agreement on the voter-ID bill, then-Representative Marc Veasey, a Democrat, accused House Republicans of racial discrimination. He alleged that "this is a racial issue—make no mistake about it. This is about skimming enough minority votes so some people can't get elected." *Id.* (ROA.102482) (internal quotation marks omitted).

146. Supporting the effort to inject charges of racial discrimination into the legislative record, one of the lawyers who currently represents the lead plaintiff in this case testified before the Senate in 2009 and introduced the narrative that voter-ID legislation was nothing more than an attempt by Republicans to curb the political power of Democratic-leaning voters. He alleged that voter-ID legislation would "make it harder for senior citizens, younger voters, poor people, people of color, women in general, to exercise their right to vote," and he argued "that most, if not all, of these groups are growing as a percentage of Texas' voting population, and most of them

tend to vote Democratic." DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 445:8-14 (March 11, 2009)) (ROA.72623). He concluded, "So that skew tends to explain to me the urgency of Republican leadership in pushing this bill. This is about partisan politics and protecting political power and marginalizing your opposition . . . ." *Id.* at 445:14-17 (ROA.72623).

147. Because Democrats were unwilling to work toward a compromise, the House considered the Senate version of S.B. 362 without any changes. Davidson Corrected Rpt. ¶ 35 (ROA.102482).

148. At this point, Democrats resorted to an extreme measure to thwart the will of the majority of Texans and the majority of the Texas Legislature: "chubbing." *Id.* Chubbing is a "parliamentary tactic" that involves "talking a bill to death" in the Texas House. Trial Tr. 258:4-19 (Sept. 5, 2014) (Veasey) (ROA.98890). To chub, House members speak for the maximum possible time about legislation calendared ahead of the bill they oppose so time will run out before the bill can come up for a vote. As intended, time ran out on the 2009 session before S.B. 362 could receive an up-or-down vote in the House. S.B. 362 was not the only bill that died in the House due to this chubbing, however. The Democrats in the House "brought the" entire "legislative process to a grinding halt on everything in order to" to kill S.B. 362. *Id.* 283:3-4 (Sept. 10, 2014) (Patrick). Thus, bills calendared for consideration after S.B. 362 were also killed by the Democrats' obstinacy. *See* Dewhurst Dep. 106:16-22 (ROA.61022). For example, the House received a number of bills from the Senate that it could not act on before the session expired. Among these were:

1) S.B. 11, a bill aimed at preventing gang activity. *See* Tex. S.B. 11, 81st Leg., R.S. (2009), http://www.capitol.state.tx.us/BillLookup/BillStages.aspx?LegSess=81R&Bill=SB11.

2) S.B. 12, a bill aimed at improving Texas's disaster preparedness. *See* Tex. S.B. 12, 81st Leg., R.S. (2009), http://www.capitol.state.tx.us/BillLookup/BillStages.aspx?LegSess=81R&Bill=SB12.

3) S.B. 16, a bill aimed at improving Texas's air quality. *See* Tex. S.B. 16, 81st Leg., R.S. (2009), http://www.capitol.state.tx.us/BillLookup/BillStages.aspx?LegSess=81R&Bill=SB16.

149. Before House Democrats shut down the legislative session in order to block an up-or-down vote on a voter ID law, the Texas Legislature was able to continue its efforts to modernize and secure Texas's electoral system in other ways. For example, H.B. 2524 was enacted to ensure the integrity of electronic voting machines, and H.B. 536 made it easier for certain persons to register to vote. H.B. 2524, Act of May 27, 2009, 81st Leg., R.S., ch. 682 Tex. Sess. Law Serv. 1735; H.B. 536, Act of May 14, 2009, 81st Leg., R.S., ch. 91 Tex. Sess. Law Serv. 396.

F. In the 2011 Legislative Session, After Republicans Obtain an Overwhelming Majority in Both Houses—and with Many of Voter ID's Opponents Voted out of Office—a Majority of the Texas Legislature Adopts S.B. 14 in Line with the Preferences of Their Constituents.

150. Following the demise of S.B. 362 in the 2009 legislative session, Republicans achieved historic electoral gains, sweeping out many voter ID opponents and sweeping in the largest Republican House majority since Reconstruction. Davidson Corrected Report ¶ 37 (ROA.102483-84). Since 2001, Republicans had been steadily increasing the number of seats they held in the Texas Legislature—from a minority party to an overwhelming majority. In 2001, Republicans held 72 House seats and 16 Senate seats. In 2003, Republicans held 88 House seats and 19 Senate seats. In 2005, Republicans held 86 House seats and 19 Senate seats. In 2007, Republicans held 80 House seats and 20 Senate seats. In 2009, Republicans held 76 House seats and 19 Senate seats. And in 2011, Republicans held 101 House seats and 19 Senate seats. See Legislative Reference Library of Texas, Member Statistics, http://www.lrl.texas.

gov/legeLeaders/members/memberStatistics.cfm (last visited Nov. 10, 2016). They achieved these gains in the midst of growing minority populations in Texas. Davidson Corrected Report ¶ 7.

151. Meanwhile, support for voter-ID requirements continued to increase around the country, and Republicans felt intense pressure from constituents to enact a photo-voter ID bill. *See supra*, FOF ¶¶ 71-92; Davidson Corrected Rpt. ¶ 40 (ROA.102485); *see also* DEF0053 ("Twenty-one states … passed major [voter ID] legislation during the period 2003-2011."). As Lt. Gov. Dewhurst explained:

> [F]or then six long years, [Dewhurst] had been meeting regularly with the Democrat Senators to [try to get them to] agree on a bipartisan bill, because . . . a super majority of, not only Anglo, but Hispanic and African American voters, during that time period from 2008 through 2011, were in favor of a Voter ID, and that we really ought to work together and come up with a bill. [But despite] [a]ll of the flexibility afforded in [H.B.] 218 and [S.B.] 362[, they were] voted against time after time by — by the Democrat[s] . . . . [So, Dewhurst] discussed with Senator Fraser [S.B. 14's sponsor] that maybe it's time to focus . . . on a bill . . . model[ed] after the Indiana and Georgia bills.

Dewhurst Dep. 112:11-113:3 (ROA.61023-24). The result was S.B. 14, with its photo ID requirement.

152. Anticipating that Democrats would again use the Senate's two-thirds rule to block an up-or-down vote on a voter-ID bill, Republicans pretermitted that maneuver by designating S.B. 14 as a special calendar item—as they had done with a voter ID bill in 2009. *See* Davidson Corrected Rpt. ¶ 42 (ROA.102486).

153. In addition, having learned from S.B. 362's death by chubbing in the House in 2009, Governor Perry, who was also a strong supporter of voter ID, designated the issue as an "emergency," which had the effect of allowing earlier consideration of a voter ID bill in the House. Trial Tr. 397:3-8 (Sept. 10, 2014) (Fraser) (ROA.101159).

154. Designating a matter as "emergency" often has more to do with structuring the legislative calendar than it does with denoting an actual "emergency" in the common use of the word:

> Q: . . . What does the term "legislative emergency" mean within the Texas Legislature?
>
> A: It means that we can take it outside of its normal 60 day—60 days prior—I mean, 60 days after the session began. That's all it means. It doesn't mean it's a high priority. What it does do—and this is something that a lay person may not understand—is because everything tends to pile up at the end in the session when you only have a 140-day session and you only meet once every two years—what it does allow you to do is to keep it from ending up in that pile at the end and allow you to consider it and debate it and flesh it out and amend it and do whatever you need to do so that it can be voted on . . . .
>
> ***
>
> So what it did is allow you to take it up earlier. And actually, I think it's better that way, because you actually get to debate it. It doesn't end up with a bunch of the crap at the end.

Aliseda Dep. 235:12-236:10 (ROA.57757). In 2011, Governor Perry designated two other matters as "emergency" legislation: "Legislation that will provide for a federal balanced budget amendment to the United States Constitution" and "Legislation that requires a sonogram before a woman elects to have an abortion so that she may be fully medically informed." DEF0001 (S.J. of Tex., 82d Leg., R.S. 55 (Jan. 24, 2011) (ROA.68923)).

155. Early consideration of voter ID carried two benefits. First, it ensured that the bill could be considered before the end of the session, thus precluding an effort to "chub" the bill and allowing an up-or-down vote on this priority legislation. Dewhurst Dep. 107:23-108:7 (ROA.61022). Second, it helped achieve both sides' goal of getting

the issue of voter ID behind them quickly in 2011, so that they could turn to other pressing matters, such as the State budget:

> Q: Senator, are you aware that the Texas Constitution prohibits the passage of a bill within the first 60 days of a legislative session unless it has been designated as an emergency item?
>
> A: That is my understanding of the Texas Constitution.
>
> Q: Thank you. Was there an urgency in your mind requiring the expeditious passage of Senate Bill 14?
>
> A: It's interesting that the Democratic caucus took a position that it would like to go ahead and get this out of the way. So the answer is yes, that it was a general consensus of the Senate as a whole. We didn't make an official decision of that because you can't do that. But the—both caucuses agreed that it would be nice to go ahead and deal with this issue early.

Trial Tr. 397:3-19 (Sept. 10, 2014) (Fraser) (ROA.101159); *accord id.* Trial Tr. 33:2-6 (Dewhurst) (ROA.100795) ("I wanted to put this issue behind us so we wouldn't have a spillover on other issues that—that I believe we had an—we had a[n] excellent chance of working together on a bipartisan basis."); *see id.* 358:18-360:3 (Sept. 5, 2014) (Anchia) (ROA.99975-77) (testifying that 2011 was going to be a very busy session, with issues such as the budget, transportation, and redistricting on the docket in addition to voter ID); Davidson Corrected Rpt. ¶ 44 (ROA.102487); *see also supra*, FOF ¶ 149 (noting that the chubbing of S.B. 362 shut down the legislative process for numerous bills). And after S.B. 14 was passed, the important issues regarding the State's finances, redistricting, and transportation were addressed. *See, e.g.*, Texas Legislative Council, Summary of Enactments 82nd Legislature at 13-21 (Nov. 2011), http://www.tlc.state.tx.us/docs/sessions/82soe.pdf (listing laws enacted addressing

appropriations and state finances); *id.* at 107 (discussing laws enacted addressing redistricting); *id.* at 451-69 (discussing laws enacted addressing transportation).

156. Aside from public support, the majority's desire to pass a voter-ID bill, the press of other legislative business, and the legislative minority's past resort to extraordinary measures to derail voter-ID legislation, the 2011 Legislature had an independent and compelling reason to ensure passage of a photo-voter-ID bill: if they did not pass it in the regular session, they would be called back for a special session. Before the 2011 legislative session began, then-Governor Perry stated: "This next session of the legislature . . . [o]ne thing [legislators] do understand and that is the governor has the ability to keep them in town until they address some issues. So I guess I might as well put them on notice today: We're going to do voter ID in 2011. We can either do it early, or we can do it late. Their call." Politifact Texas, *Perry-O-Meter: Ensure Legislature acts on a proposal requiring voters to present photo IDs*, http://www.politifact.com/texas/promises/perry-o-meter/promise/892/ensure-legislature-acts-proposal-requiring-voters-/.

157. Had Governor Perry called a special session to address photo-voter-ID legislation, a majority vote would have been sufficient for the Senate to pass the bill. During a special session, the Senate considers bills without requiring a two-thirds vote to suspend the regular order of business. Trial Tr. 266:23-267:8 (Sept. 10, 2014) (Patrick) ("So on the special sessions we don't use the 21-vote rule."). Indeed, that was the case in the special session Governor Perry called in 2011. Dewhurst Dep. 109:1-6 ("[I]n June 2011, I did not have a blocker bill, meaning, we passed all the legislation on the call with a simple majority.").

1. The Senate passes S.B. 14.

158. To help expedite consideration of S.B. 14, the Senate resolved into the Committee of the Whole, as it had done in 2009. Davidson Corrected Rpt. ¶ 44 (ROA.102487); *see supra*, FOF ¶ 142 (discussing the Committee of the Whole).

159. As voter ID bills had been proposed and actively debated for six years and in the three previous legislative sessions by that point, there was little new discussion regarding the issue in the 2011 legislative session. Democratic Representative Martinez Fischer, for example, explained that in "2011, this is not a brand new piece of legislation. So I would suffice it to say that when voter ID was filed in 2011, I think many of us picked up the conversation of '09." Trial Tr. 102:17-19 (Sept. 2, 2014) (Martinez Fischer) (ROA.98734). Likewise, Democratic Senator Davis testified as follows:

> Q: [D]id you have some time to prepare for the Senate Bill 14 debate?
>
> A: Well, we had debated this bill in prior sessions so yes, in that sense. We certainly understood and had had testimony in prior sessions about the pros and cons of such a bill and were prepared from that perspective.

Id. 11:1-7 (Sept. 5, 2014) (Davis) (ROA.99628). Democratic Senator Rodney Ellis concurred, testifying that because the bill had come up so many times in previous sessions, he was well prepared to offer amendments. *Id.* 171:18-172:11 (Ellis) (ROA.99788-89). Recognizing the thorough debate on the voter-ID bill in 2009, there was bipartisan agreement that "[e]verything that was in the record from the previous debate two years earlier would be in the record again . . . so everything was included." *Id.* 184:9-14 (ROA.99801); *accord* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 31:-33:16 (Jan. 25, 2011)).

160. Despite the already voluminous record, the Committee of the Whole heard additional testimony from numerous witnesses, both for and against the bill. Davidson Corrected Rpt. ¶¶ 46-49 (ROA.102489-91).

161. Senator Whitmire, an opponent of S.B. 14, acknowledged during the debate that the proponents of S.B. 14 in the Senate did not intend "to disenfranchise anybody." DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 64:5-8 (Jan. 25, 2011)) (ROA.68948).

162. Senator Ellis, another opponent, agreed that the intent of the sponsor of S.B. 14 was to ensure that everyone has the right to vote. *Id*. 201:6-10 (ROA.68983) (Senator Fraser: "I want to make sure that the groups you're talking about, you know, women, minority, elderly, that they all have the right to vote; and I believe my bill does that." Senator Ellis: "Okay. And I know that's your intent.").

163. Senator Ellis also conceded that there was no evidence that S.B. 14 would have a disparate impact on minorities. DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 29 (Jan. 26, 2011)) (ROA.70215) ("I can no more prove, without this bill being in effect, that it has the disparate impact that folks on my side are afraid of."). Plaintiffs' own expert had earlier offered a similar concession. *See* DEF0022 (Robert S. Erikson & Lorraine C. Minnite, Modeling Problems in the Voter Identification-Voter Turnout Debate, 8 Election Law Journal 85, 98 (2009)) (ROA.78232) ("It should be evident that our sympathies lie with the plaintiffs in the voter ID cases. Yet we see the existing science regarding vote suppression as incomplete and inconclusive.").

164. Senators proposed 37 amendments to S.B. 14, 28 of which were rejected, and 9 of which were adopted. Davidson Corrected Rpt. ¶ 50 (ROA.102491).

165. Most of the amendments offered by Democrats were offered just "to make a point" and to build a record for this lawsuit. Trial Tr. 172:7 (Sept. 5, 2014) (Ellis) (ROA.99789); *id.* 203:10-21 (ROA.99820) (discussing email from Ellis's Chief of Staff referring to plan to use expected vote against an Ellis amendment in future legal proceedings against S.B. 14). One amendment, for example, sought to prevent the enforcement of S.B. 14 unless a certain of amount of funding for schools was appropriated. DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 34-35 (Jan. 26, 2011)) (ROA.70220-21).

166. Confirming their symbolic nature, most Democratic amendments were not "given to the author of" S.B. 14 "24 hours in advance," in violation of "the general rule in the Senate and the rule that [was] placed on" S.B. 14. Fraser Dep. 310:17-21 (ROA.63277). This failure occurred notwithstanding that voter ID had been under debate for six years and notwithstanding that Democrats had two weeks between the filing of S.B. 14 and its consideration by the Committee of the Whole to prepare amendments. *See* Texas Legislature Online, History of S.B. 14, http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB 14 (last visited Nov. 9, 2016).

167. In response, Republicans, knowing none of the Democratic senators were going to support the bill in any circumstance, tabled many Democratic amendments. *See* Trial Tr. 29:2-5 (Sept. 5, 2014) (Davis) (ROA.99646).

168. Several Democratic amendments were nevertheless adopted. An amendment offered by Democratic Senator Hinojosa "to allow concealed handgun permits to be used as" voter ID (Trial Tr. 177:7-8 (Sept. 5, 2014) (Ellis) (ROA.99794)) was adopted unanimously (S.J. of Tex., 82d Leg., R.S. 123 (Jan. 26, 2011) (ROA.70125)). Democratic Senator Lucio offered an amendment to allow the use of certain expired IDs,

which was adopted unanimously. *Id.* at 125 (ROA.70129). Democratic Senator Davis's amendment to accommodate voters whose names differed slightly between their ID and voter registration was adopted unanimously. *Id.* at 139 (ROA.70141). In addition, Senator Davis proposed an amendment to allow a person who was indigent and who swears in an affidavit that he cannot afford S.B. 14-compliant ID to vote. Trial Tr. 28:12-18 (Sept. 5, 2014) (Davis) (ROA.99645). Senator Davis withdrew this amendment, but it was immediately incorporated into a more comprehensive amendment offered by Senator Duncan. *See* S.J. of Tex., 82d Leg., R.S. 136-37 (Jan. 26, 2011) (ROA.70138-39). Senator Duncan's amendment was adopted unanimously. *Id.* at 138 (ROA.70140). Senator Davis's indigency provision was excised in the House at the behest of *Democrats*. *See infra*, FOF ¶¶ 184, 195.

169. One of the tabled amendments would have required evening and weekend hours at driver's license offices to make it easier for voters to acquire ID. Davidson Corrected Rpt. ¶ 50 (ROA.102491). This raised an issue of implementation, which is generally left to the responsible agency in the first instance, with legislative oversight. *See* Trial Tr. 25:14-17 (Sept. 10, 2014) (Dewhurst) (ROA.100787); Dewhurst Dep. 138:5-15 (ROA.61030); *see also* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 22, 28 (Jan. 26, 2011)) (ROA.70206) ("I don't think Senate Bill 14 is the appropriate vehicle to debate DPS operations."). In any event, driver's license's offices expanded their hours during the implementation of S.B. 14. *See supra*, FOF ¶ 33.

170. Another tabled amendment would have prohibited state agencies from charging a fee for issuing documents used to obtain a photo ID, such as a birth certificate. Dewhurst Dep. 197:18-24 (ROA.61045). This was likewise an issue of implementation (*see* Trial Tr. 25:14-17 (Sept. 10, 2014) (Dewhurst) (ROA.100787) ("[I]t was my intent during the implementation, once the bill had passed – during the implementation of

the bill by the agencies to reduce that cost"); Dewhurst Dep. 192:17-22 (ROA.61043) ("I had already communicated with Senator Fraser on—on making this . . . no cost to people that want to obtain photo voter ID, that the agencies, DPS and Health and Human Services, would implement what we wanted, and they did. And therefore, the—that was not going to be a problem.")).

171. The fee for an EIC birth certificate was greatly reduced during implementation (*see supra*, FOF ¶ 25). Then-Lieutenant Governor Dewhurst explained that this was never going to be a problem:

> Q: That reduction in the cost of the underlying documents, that was not within the text of Senate Bill 14, was it?
>
> A: It was not because, as we talked a few moments ago, and I hope I didn't sound like I was preaching, but in the Texas legislative example, we frequently don't spell out every single detail, but it was left to the implementing agencies to—to reduce the cost, as was done by the Health and Human Services on the question of birth certificates and DPS on the cost behind the election identification card.
>
> Q: . . . How does the Legislature ensure that the agencies will do what the Legislature wants the agencies to do as a general matter?
>
> A: The agencies are well advised to do what the Legislature wants them to do and what the leadership in the Legislature wants them to do because they're all subject to the next appropriation.

Dewhurst Dep. 138:5-23 (ROA.61030). Furthermore, the Legislature in 2015 responded to the agency's implementation of S.B. 14 by enacting a law removing any fees for obtaining government documents needed to get a free EIC voter ID. Act of May 25, 2015, 84th Leg., R.S., ch. 130, 2015 Tex. Gen. Laws 1134.

172. Another tabled amendment would have required the Secretary of State to analyze annually S.B. 14's impact on voters. Davidson Corrected Rpt. ¶ 50 (ROA.102491). Republicans opposed this amendment because they believed that the

better course was for the Legislature to examine the impact of S.B. 14 after it had been in place for a couple of years, and then consider whether to place this annual mandate on the Secretary of State. DEF00001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 29 (Jan. 26, 2011)) (ROA.70215). In any event, the study requested was not feasible given the data held by the Secretary of State (*see* Shorter Dep. 78:2-80:22 (ROA.62351); Dewhurst Dep. 193:2-7 (ROA.61044) ("I didn't feel like, at that point, knowing that they having problems marrying the databases and knowing that there was a continuing problem with – with accessing the data, that it would be worth the time spent, since I didn't believe it was going to be at that point in time in 2011 productive.")), and such a study was inevitably going to be required anyway in order to achieve preclearance under Section 5 of the Voting Rights Act (Trial Tr. 203:16-20 (Sept. 5, 2014) (Ellis) (ROA.99820)). In fact, such a study was completed during the preclearance process. *See* Section 5 Trial Tr. 136:5-137:14 (July 9, 2012 P.M. Session) (Sager) (ROA.66358-59).

173. Another tabled amendment would have expanded the forms of photo ID that could serve as voter ID. Legislators expressed concern with this type of amendment on the basis that expanding the number of acceptable IDs would cause too much confusion among election officials. *See, e.g.* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 10-12 (Jan. 26, 2011)) (ROA.70196-98; ROA.70201-02); Williams Dep. 47:20-23 (ROA.62696) (expressing worry that allowing many forms of ID "makes it very difficult for the person who's working at the polls—they have so many things that they have to look at—and they don't know whether it's a valid document or not."); *id.* 45:19-22 (ROA.62696); *see also* Patrick Dep. 327:10-13 (ROA.64646) ("Q: . . . To your knowledge, do all those state-issued

state employment IDs, are – do they all look alike? A: No, they all look – they're actually different."); Bueck Dep. 143:5-18 (ROA.57921). This was particularly true regarding student IDs:

> [T]here are arguably hundreds of different community colleges and universities, and every student ID from a different university or college or a community college would have been different, and it would have been virtually impossible for election officials to be able to know which ones were valid and which ones weren't, which ones had been forged, which ones had not.

Dewhurst Dep. 200:21-201:02 (ROA.61045); *see also* Williams Dep. 45:9-18 (ROA.62696).

174. Student IDs have an additional disadvantage in that they cannot be used to verify age or residency. *See* Patrick Dep. 326:5-23 (ROA.64646). The lone student-plaintiff in this lawsuit is a good example of this problem. [redacted] These facts suggest that she does not meet the residency requirement necessary to vote in Texas, as opposed to California. *See* Tex. Att'y Gen. Op. GA-0141, 2004 WL 228527, at *9 (2004) (citing, among other authorities, Tex. Elec. Code §§ 1.015, 11.001-02).

175. On January 26, 2011, the Senate passed S.B. 14 by a vote of 19 to 11. S.J. of Tex., 82d Leg., R.S. 146 (Jan. 26, 2011) (ROA.70251).

2. The House passes a modified version of S.B. 14.

176. S.B. 14 was under consideration in the House for nearly two months—which is half of the duration of a regular legislative session. *See* Texas Legislature Online, History of S.B. 14, http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB 14 (last visited Nov. 9, 2016).

177. To focus consideration of S.B. 14 in the House, the Speaker of the House established a Select Committee to consider the bill. Davidson Corrected Rpt. ¶ 52 (ROA.102492). The Republican Speaker chose then-Representative Veasey, a Democrat and vocal opponent of voter ID laws, as vice-Chair of the Select Committee on Voter Fraud, where then-Representative Veasey was able to voice his concerns and propose changes to legislation. Trial Tr. 237:19-239:2; 248:14-16 (Sept. 2, 2014) (Veasey) (ROA.98869-71; ROA.98880).

178. The Select Committee considered testimony from nearly 40 witnesses on the merits of S.B. 14. DEF0001 (Tex. Leg., House Select Committee on Voter Identification and Voter Fraud, Minutes, 82d Leg., R.S. (Mar. 1, 2011) (ROA.70327-29)).

179. S.B. 14 was reported favorably out of the Select Committee on March 21, 2011, and considered by the Calendars Committee that evening. *See* DEF0001 (H.J. of Tex., 82d Leg., R.S. 952 (Mar. 23, 2011)) (ROA.70959); Texas Legislature Online, History of S.B. 14, http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB 14 (last visited Nov. 9, 2016). The meeting of the Calendars Committee was scheduled to begin at 9 p.m., but did not come to order until 10:07 p.m. DEF0001 (H.J. of Tex., 82d Leg., R.S. 952 (Mar. 23, 2011) (ROA.70959)); *see also* Tex. Leg., House Calendars Committee, Notice of Mar. 21, 2011 Formal Meeting, 82d Leg., R.S., http://www.legis.state.tx.us/tlodocs/82R/schedules/pdf/C0502011032121001.PDF. The Calendars Committee reported out S.B. 14 for consideration by the whole House

on March 23, 2011. *See* Tex. Leg., House Calendars Committee, Minutes, 82d Leg., R.S. (March 21, 2011), http://www.legis.state.tx.us/tlodocs/82R/minutes/pdf/C0502011032121001.PDF. Contrary to the representation made by Plaintiffs' expert, Dr. Davidson (*see* Davidson Corrected Rpt. ¶ 58 (ROA.102495-96)), no amendments were considered or adopted during this meeting, which lasted less than three minutes (*see* Tex. Leg., House Calendars Committee, Minutes, 82d Leg., R.S. (March 21, 2011), http://www.legis.state.tx.us/tlodocs/82R/minutes/pdf/C0502011032121001.PDF).

180. The whole House debated S.B. 14 on March 23, 2011. *See* Texas Legislature Online, History of S.B. 14, http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB 14 (last visited Nov. 9, 2016). In an attempt to once again block consideration of voter ID, House Democrats raised a half-dozen points of order objecting to consideration of S.B. 14. *See* H.J. of Tex., 82d Leg., R.S. 951-58 (Mar. 23, 2011) (ROA.70958-65). Each was overruled. *See id.*

181. Democratic Representative Anchia testified that S.B. 14 opponents were "given ample opportunity" to express their concerns and "engage in debate about SB14 during its consideration." Trial Tr. 363:18-21 (Sept. 5, 2014) (Anchia) (ROA.99980).

182. During the House's consideration of S.B. 14, Democratic Representative Anchia inquired as to why "the identification requirements of SB 14 are more restrictive than SB 362 from last session?" DEF0001 (H.J. of Tex., 82d Leg., R.S. 918 (Mar. 23, 2011) (ROA.70855)). The primary sponsor of S.B. 14 in the House responded that:

> We've had two additional years to see that photo ID is working in other states. We've also had two additional years to hear from the public on their concerns of the integrity of the ballot box. Only a true photo ID bill

> can deter and detect fraud at the polls and can protect the public's confidence in the election.

Id. (ROA.70855).

183. As Representative Smith later recounted:

> I think everybody understands why non-photo ID was taken out of Senate Bill 362 [in 2009] because it was just a demand by our constituents that we require a photo ID in order for people to vote and they were very cynical about the notion of allowing non-photo IDs . . .. [M]y [primary] opponent used [my support for non-photo ID] against me in the most recent election politically without mentioning that he too had voted for that same version of the bill. So this notion of letting people vote with their library cards feeds the perception that you're in favor of liberal laws allowing people to vote even under circumstances where they were not legally entitled to do so.

Trial Tr. 339:10-22 (Sept. 10, 2014) (Smith) (ROA.100333).

184. During the House's consideration of S.B. 14, Democratic Representative Anchia criticized the provision of the Senate version of S.B. 14 that allowed the indigent to vote without a photo ID by swearing an affidavit to their indigency:

> Representative Anchia: I fear that your bill is worse than current law and really undermines the argument that this is about ballot integrity because suddenly you have a mechanism where people can come in and never show anything and not be on the list and the ballot board shall accept their . . . ballot. It's not even a "may" anymore. You changed it to "shall."
>
> Representative Harless: They have six days to prove who they are, and the ballot board at that point --
>
> Representative Anchia: But they don't have to prove who they are. They just say they have a religious objection or are indigent. They never really prove who they are do they?

DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S. vol. I at 57:2-14 (March 23, 2011) (ROA.71136)). Accepting Democratic Representative Anchia's criticism of the indigency-affidavit procedure, this provision was subsequently excised:

> Representative Anchia: [C]ould you discuss what your amendment does?
>
> Representative Harper-Brown: Yes. Representative Anchia, this is the section of the Code or the section of the bill that you discussed earlier that talks about how someone could actually go in and vote without showing an ID at all if they sign an affidavit saying that they have a problem due to the religious objection or the indigence. And so, it takes those two provisions out and just says you can vote provisionally and then you have the six days to bring the photo ID in to prove that you—that you have—that you can vote.
>
> Representative Anchia: Okay. So it just removes indigence exception and religious objection?
>
> Representative Harper-Brown: That's it.
>
> Representative Anchia: Those are the exceptions right now. And what you have to do after six days is come in and cure only with a photo ID?
>
> ***
>
> Representative Harper-Brown: Right. Right. Thank you.
>
> ***
>
> Speaker: . . . By vote of 107 ayes 40 nays 2 present not voting, the amendment is passed.

Id. 103:13-105:1 (ROA.71313-15). Representative Anchia, and seven other Democrats, voted for this amendment to eliminate an indigency-affidavit procedure. *See* H.J. of Tex., 82d Leg., R.S. 983 (March 23, 2011) (ROA.70990).[12]

[12] Senator Wendy Davis was thus mistaken when she testified that the indigency provision "was stripped out by a Republic[an] House Member . . . on a Republican to Democratic vote." Trial Tr. 29:21-30:1 (Sept. 5, 2014) (Davis) (ROA.99646-47).

185. The House excised the provision of the Senate version of S.B. 14 that would have exempted those over 70 from the ID requirement, under the rationale that the exemption for the disabled would cover all people, of any age, who were physically unable to obtain an ID. *See* H.J. of Tex., 82d Leg., R.S. 965 (March 23, 2011) (ROA.70972).

186. The Democratic legislators in the House offered amendments related to S.B. 14's implementation that were similar to those offered in the Senate. *See* Davidson Corrected Rpt. ¶ 59 (ROA.102496); *supra*, FOF ¶¶ 169-170; *see also* DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., Vol. II at 34:4-11 (March 21, 2011) (ROA.70895). Each was rejected. Davidson Corrected Rpt. ¶ 59 (ROA.102496).

187. During consideration of S.B. 14, House Democrats complained that Republicans had failed to address mail-in ballot fraud. *See, e.g.*, H.J. of Tex., 82d Leg., R.S. 914 (March 21, 2011) (ROA.70851). In doing so, they ignored that, prior to attempting to address in-person fraud for the first time in 2005, the Texas Legislature did, in fact, address mail-in ballot fraud in 2003. *See supra*, FOF ¶ 106. They also ignored H.B. 2449, a bill introduced by Republican Representative Jose Aliseda before consideration of S.B. 14 and later enacted in the 2011 session, which enhanced penalties for certain mail-in ballot fraud and restricted pubic access to mail-in ballot applications in order to help prevent mail-in ballot fraud. *See* Act of May 24, 2011, 82d Leg., R.S., ch. 1159 Tex. Gen. Laws 3008; H.J. of Tex., 82d Leg., R.S. 780 (March 14, 2011); *see also* DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. III at 117:23-25 (March 23, 2011) (ROA.71571) (Representative Aliseda noting his legislation).

188. S.B. 14 and H.B. 2449 were not the only laws enacted by the Texas Legislature in 2011 aimed at modernizing and strengthening Texas's electoral system. H.B.

2194 addressed voter registration fraud by prohibiting performance-based compensation for registering voters. H.B. 174 addressed inflated voter rolls by revising procedures for verifying persons who are deceased or not citizens of the United States for purposes of establishing a person's ineligibility to vote or canceling a person's voter registration. And H.B. 1046 also addressed inflated voter rolls by requiring the Secretary of State to obtain quarterly from the Social Security Administration available information specified by the Secretary of State relating to deceased residents of Texas and compare the information received to the statewide computerized voter registration list. Act of May 25, 2011, 82d Leg., R.S., ch. 1002 Tex. Gen. Laws 2541; Act of May 24, 2011, 82d Leg., R.S., ch. 683, 2011 Tex. Gen. Laws 1644; Act of May 25, 2011, 82d Leg., R.S., ch. 953, 2011 Tex. Gen. Laws 2405.

189. During consideration of S.B. 14, House Democrats complained about the lack of evidence of voter fraud. *See, e.g.*, DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. II at 18:13-16 (Mar. 21, 2011) (ROA.70879). In doing so, House Democrats ignored the Supreme Court's admonition that a State is fully justified in acting to prevent fraud even though there may be "*no evidence of any such fraud actually occurring in [the state] at any time in its history*." *Crawford*, 553 U.S. at 194 (emphasis added).

190. House Democrats also ignored evidence before the Legislature that registration and in-person voter fraud not only exist, but that they are hard to detect. *See, e.g.*, DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 26:6-27:4, 507:23-508:22 (Jan. 25, 2011)) (ROA.68939, 69059); *id.* (Tex. Leg., House Select Committee on Voter Identification & Voter Fraud Hearing on S.B. 14, 82d Leg., R.S., vol. I at 20:5-13, 22:7-10, 22:22-23:8, 26:13-15 (March 1, 2011) (ROA.70349, 70351-52, 70355)); *id.* (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. II at 23:19-24:1 (March 23, 2011) (ROA.71233-34)); *id.* (Debate on

S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 211:10-214:10, 281:10-13 (May 10, 2009)) (ROA.72389-92, 72459).

191. The Legislature heard evidence of fraudulent ballots cast in the name of deceased voters. The House Elections Committee had advised the whole House of very troubling testimony from Paul Bettencourt, Harris County's Tax Assessor and acting Voter Registrar:

> Mr. Bettencourt . . . had an interesting case citing 24 examples of people who had passed away, but had voted after the dates of their deaths. This case involved a state representative who had a church member fill out 175 fraudulent registration cards with the intent of voter impersonation. One person used had died in 1983 and were still voting 13 years later. All of these registration cards were turned into to former D.A. Johnny Holmes who said they were obviously impersonating these voters, but was difficult to determine who was doing the impersonating. Mr. Bettencourt believed if Harris County had not been able to successfully detect this scam the only way to catch it would have been through some form of photo ID. He felt they were lucky to catch these cases before the election.

House Elections Committee, Interim Report to the 81st Texas Legislature at 40 (Jan. 2009), http://www.lrl.state.tx.us/scanned/interim/80/EL25he.pdf.

192. During the House's consideration of S.B. 14, House Democrats complained about the possible effects of S.B. 14 on minorities. *See, e.g.*, DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. II at 26:16-22 (March 21, 2011) (ROA.70887)). In doing so, House Democrats ignored the studies showing that photo-ID requirements do not negatively affect the ability of minorities to vote. *See supra,* FOF ¶¶ 36-37; *infra*, FOF ¶¶ 207-215.

193. On March 24, 2011, the House passed its modified version of S.B. 14 by a vote of 101 to 48. H.J. of Tex., 82d Leg., R.S. 1082 (March 24, 2011) (ROA.71644)).

3. Both the House and Senate pass the conference report of S.B. 14.

194. Because the House and Senate versions of S.B. 14 differed, a conference committee was convened where changes were made to reconcile the differences. *See* DEF0001 (Tex. Leg., S.B. 14 Conference Committee Report, 82d Leg., R.S. (May 4, 2011) (ROA.71744)).

195. The most notable change was the inclusion of the provision providing for free EICs that satisfied the photo-voter ID requirement. After the Senate's indigency provision was excised at Democratic Representative Anchia's suggestion and with Democratic legislators' votes, the conferees added a provision creating EICs, which would be free of charge. *See id.* (Conference Committee Report, Section-by-Section Analysis at 5, 8 (ROA.71748, 71751)); Trial Tr. 98:14-18 (Sept. 11, 2014) (Williams) (ROA.101283) ("Q: [T]here is no exception in SB 14 for people who are indigent in Texas, correct? A: [T]he Election Identification Certificate is free of charge. That is the exception.").

196. On May 9, 2011, in the final month of the legislative session, the Senate adopted the Conference Report of S.B. 14 by a vote of 19 to 12. S.J. of Tex., 82d Leg., R.S. 2084 (May 9, 2011) (ROA.71816).

197. All but one of the Senators who voted for the final version of S.B. 14 had previously shown a willingness—by voting for S.B. 362 in 2009—to compromise and allow the use of non-photo IDs to verify a voter's identity. *Compare id.*, *with* S.J. of Tex., 81st Leg., R.S. 589 (Mar. 18, 2009). The remaining senator, Senator Birdwell, was not a senator in 2009.

198. On May 16, 2011, in the final month of the legislative session, the House adopted the Conference Report of S.B. 14 by a vote of 98 to 46. H.J. of Tex., 82d Leg., R.S. 4054-55 (May 16, 2011) (ROA.71968-69).

199. Of the 98 representatives who voted for S.B. 14, 55 had previously shown a willingness—by voting for H.B. 1706 in 2005, H.B. 218 in 2007, or both—to compromise and allow the use of non-photo IDs to verify a voter's identity. *Compare id. with* H.J. of Tex., 79th Leg., R.S. 2554-55 (May 3, 2005), *and* H.J. of Tex., 80th Leg., R.S. 2246 (Apr. 24, 2007). All but five of the remaining representatives did not have the opportunity to record a vote on earlier voter ID legislation. *See id.* The five who did—Representatives Eiland, Hopson, Peña, Pickett, and Ritter—voted against voter-ID bills in 2005 and 2007, but then voted for S.B. 14. *See supra*, FOF ¶¶ 88, 92. Notably, all five of these representatives were Democrats when they voted against the more permissive voter-ID bills in 2005 and 2007. *See id.*

200. Overall, support for S.B. 14 in the Texas Legislature was divided among political—not racial—lines. Republicans in the Senate uniformly supported S.B. 14; Democrats uniformly opposed it. S.J. of Tex., 82d Leg., R.S. 2084 (May 9, 2011) (ROA.71816). S.B. 14 was supported by all Republican Members of the Texas House, including Hispanic and African-American Republicans. *Id.* (reporting that Representatives Aaron Peña, Jose Aliseda, John Garza, Dee Margo, James White, and Stefani Carter voted for S.B. 14); *see also* Trial Tr. 291: 20-293:6 (Sept. 2, 2014) (Golando) (ROA.98923-25) ("Q: Did any members of [the Mexican American Legislative Caucus] vote for S.B. 14? A: Yes."). Democrats overwhelmingly opposed the bill, although two Democratic House Members voted for the bill—Representatives Craig Eiland and Joe Pickett. Confirming that support for S.B. 14 was divided among political and not racial lines, three Republicans who voted in favor of S.B. 14, including one Hispanic

representative, only began to support voter ID after they switched parties. *See supra*, FOF ¶ 92.

201. S.B. 14 was signed into law by the Governor on May 27, 2011, at the end of the 2011 legislative session. H.J. of Tex., 82d Leg., R.S. 4526 (May 27, 2011). Although S.B. 14 became law in 2011, it was not enforced until 2013, when the Supreme Court's decision in *Shelby County v. Holder* effectively eliminated the requirement that Texas preclear its election laws with the federal government. *See* Trial Tr. 328:17-329:10 (Sept. 10, 2011) (Ingram) (ROA.101090-91).

V. THE TEXAS LEGISLATURE ENACTED S.B. 14 FOR THE EXPRESS PURPOSE OF COMBATING VOTER FRAUD AND PRESERVING PUBLIC CONFIDENCE IN ELECTIONS.

202. The legislative record establishes that S.B. 14 was enacted for the purposes of detecting and deterring voter fraud, as well as preserving public confidence in the electoral system.

A. The Legislative Record Reveals that S.B. 14 Was Enacted to Combat In-person Voter Fraud and Preserve Confidence in the Electoral System, Not to Discriminate Against Minorities.

203. There is not a single comment in the legislative record that could be interpreted as suggesting a discriminatory purpose.

204. Rather, the legislative record establishes that S.B. 14 was enacted for the purposes of detecting and deterring voter fraud, as well as preserving public confidence in the electoral system.

205. Voter ID bills were passed by at least one of the Houses of the Texas Legislature in each regular legislative session from 2005 to 2011, and the rationale for these bills was consistent: to deter voter fraud and safeguard voter confidence. *See,*

e.g., DEF0002 (Tex. Leg., House Elections Committee Hearing on H.B. 1706, 79th Leg., at 107:8-12 (March 17, 2005) (ROA.77390)) ("Chairwoman Denny: [I]t is so important that we safeguard the integrity of the vote and that—that people are assured that their vote will be counted and that no one usurped their authority to cast their own vote."); DEF0002 (Debate on Tex. H.B. 218 on the Floor of the House, 80th Leg., R.S., at 53:11-18, 81:11-16 (April 23, 2007) (ROA.76507, 76535)) ("Representative Brown: The integrity of the process. As people are more and more disillusioned with the integrity of the process, we have less participation. And in a number of states, as they have tightened up on their requirements to be able to vote, they have had greater participation. And that's what we hope for. . . . The intent of our bill is to increase the integrity of the voting process and thereby to increase confidence that every persons' vote will count. One man, one vote is what we've stood behind for a long time and we need to make it effective."); DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 52:19-53:3 (May 10, 2009)) (Senator Fraser explaining that S.B. 362 "goes a long ways" towards preventing fraud and increasing voter confidence); DEF0001 (H.J. of Tex., 82nd Leg., R.S., 918 (Mar. 21, 2011) (ROA.70855)) (Representative Harless: "Only a true photo ID bill can deter and detect fraud at the polls and can protect the public's confidence in the election.").

206. This was recognized by Democrats at the time:

> Representative Giddings: To Representative Brown and my good friend, Leo Berman, and my committee members, Mr. Bohac and others who have worked on this bill, let me say from the very beginning that I know that your intentions here are good and honorable, and I want to say that again.
>
> I truly believe that your intentions are good and honorable, and I believe it is a sincere attempt on your part to stop voter fraud.

DEF0002 (Debate on Tex. H.B. 218 on the Floor of the House, 80th Leg., R.S., 3:5-13 (April 24, 2007) (ROA.76853).

B. The Texas Legislature Concluded that S.B. 14 Would Not Have a Disparate Impact on Minorities.

207. S.B. 14 was enacted on the expressed belief that it would not have a disparate impact on minorities and was not intended to disenfranchise any voter:

> Senator Ellis: Are you confident, Senator, that your bill would not have a disparate impact . . . on racial ethnic minorities?
>
> Senator Fraser: I am –
>
> Senator Ellis: Are you confident?
>
> Senator Fraser: – absolutely sure. I would not have filed the bill if I had thought it—I want to make sure that every person in the state has a right to vote. . . . [A]nd I do not believe that in any way we're impacting that and that—that—you know, I want to make sure that the groups you're talking about, you know women, minority, elderly, that they all have the right to vote and I believe my bill does that.
>
> Senator Ellis: Okay. And I know that's your intent.
>
> Senator Fraser: Yes.
>
> Senator Ellis: But you're confident that it will have no impact?
>
> Senator Fraser: I'm very confident.

DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 200:19-201:14 (Jan. 25, 2011) (ROA.68982-83)).

> Representative Harless: We've had two additional years to see that photo ID is working in other states. . . .
>
> Representative Anchia: Is it . . . it possible that Latinos and African Americans in Texas will be put in a worse position in terms of electoral power as a result of Senate Bill 14?
>
> Representative Harless: I believe with all my heart this bill will increase turnout of all voters in the State of Texas. . . . In the two states that have

> passed this type of voter—similar bills that—to our bill, they have showed increased in election for the minorities And I think that we will see the same results in Texas. This will increase turnout of all voters because of the restored confidence that their vote counts

DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. II, 36:5-37:4 (Mar. 21, 2011) (ROA.70897-98)); *see also, e.g.*, *supra*, FOF ¶¶ 163; Trial Tr. 24:5-10 (Sept. 10, 2014) (Dewhurst) (ROA.100786) ("I categorically oppose that statement . . . . All the empirical data that I've seen has shown that there is no—no example that I'm aware of where in any jurisdiction with a photo voter I.D. requirement that individuals have not been able to obtain access to acceptable documents."); McCoy Dep. 76:12-17 (ROA.61557) ("[W]e did not have the resources to do an analysis of Texas voters. What we did have, as we entered the 2009 session, were three studies that were done about Indiana and Georgia that showed there was no impact after those photo ID [laws were] implemented."). One legislator's assumption that minority voters were less likely to have drivers' licenses (*see* Davidson Report ¶ 34 (ROA.102008)), even if valid, would have said little in 2011 about the ultimate effect that S.B. 14 would have given (1) the other IDs that satisfy S.B. 14, (2) the provision of free EICs, and (3) the common-sense notion that requiring a photo ID to vote would encourage those without an S.B. 14-compliant ID to obtain one. *See* Dewhurst Dep. 192:13-193:2 (ROA.61043-44). This is especially true given the evidence before the Legislature of the limited impact of similar laws. *See supra*, FOF ¶¶ 36-37; *infra*, FOF ¶¶ 209-210.

208. In reaching the conclusion that S.B. 14 would not have a disparate impact on minorities, the Legislature relied on academic studies and the experiences of other States with photo-voter ID laws.

209. For example, the Texas Legislature considered real-world empirical studies—as opposed to statistical estimates—showing that requiring voters to prove their identity with a photo ID did not negatively affect the ability of those entitled to vote to do so. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibits 7, 9, and 10 (Mar. 11, 2009) (ROA.72286)); Fraser Dep. 72:9-21, 74:13-22 (ROA.61180-81).

210. The Legislature learned from Plaintiff's *own expert*, Dr. Ansolabehere, that "exclusions from voting" resulting from voter ID laws "are exceptionally rare." DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 9 at 124 (Mar. 11, 2009) (ROA.73420) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007)).

211. The Texas Legislature also learned that similar voter ID laws did not result in disenfranchisement as the opponents of those laws—just like opponents of S.B. 14—predicted. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibits 23, 25, and 28 (Mar. 11, 2009) (ROA.72551, 72613, 72691)). Georgia's Deputy Secretary of State testified:

> [O]pponents of photo identification requirements [in Georgia] have long argued—quite vocally and emphatically—that these laws would lead to the disenfranchisement of, in Georgia's case, hundreds-of-thousands of voters.
>
> But, when the State of Georgia finally had its day in court and evidence was proffered and considered, it became clear that the emotional and

> hyperbolic arguments used to argue against the state's photo identification law was simply empty rhetoric.

DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 25 at 3 (Mar. 11, 2009) (ROA.73681)) (written testimony of Robert A. Simms, Georgia Deputy Secretary of State).

212. Among this other evidence, the House Committee on Elections also heard testimony from the Elections Division Director for the Secretary of State of Georgia about the 16 elections that Georgia had held since implementing its voter ID law in August 2007. DEF0001 (Tex. Leg., House Committee on Elections, 81st Leg., R.S., vol. II, at 364-67 (Apr. 6, 2009) (ROA.74975-78)). He testified that his office has never received a single complaint that anyone was disenfranchised or turned away from the polls because they lacked photo ID. *Id* at 364:1-365:8 (ROA.74975-76). He also testified that, despite four year of federal lawsuits, no single individual had alleged that he was substantially burdened by Georgia's voter ID law. *Id.* at 367:21-24 (ROA.74978).[13]

213. The Legislature heard testimony from a representative of the Brennan Center for Justice, an opponent of voter ID, indicating that there was no evidence that voter ID requirements adversely affect voter turnout for minorities, indigent, or elderly voters. *Id.*, vol. I, at 88 (ROA.74635).

214. The Indiana Secretary of State testified that "[i]n the five years and eight statewide primary general elections" that he's "been involved with" since the passage

13 [redacted]

of Indiana's voter ID law, "there's been scant evidence of disenfranchisement or discrimination in Indiana." DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 272:9-12 (Jan. 25, 2011) (ROA.69000)).

215. The Texas Legislature also received evidence that passing a voter identification law could increase participation in the electoral process by enhancing public confidence in elections. Trial Tr. 397:25-398:8 (Sept. 10, 2014) (Fraser) (ROA.101159-60); DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7 at 2 (Mar. 11, 2009) (ROA.73372) (concluding that it is "plausible that photo identification requirements increase turnout")).

216. As it turned out, the supporters of S.B. 14 were right. In the elections that followed the enforcement of S.B. 14, there was no discernable impact on political participation. *See supra*, FOF ¶¶ 35-51.

217. It is true that this Court and the Fifth Circuit concluded that S.B. 14 had a discriminatory *effect* on the right to vote on account of race, under Section 2 of the Voting Rights Act.[14] This conclusion, however, was based on statistical studies done *after* the enactment of S.B. 14, estimating racial disparities in possession of S.B. 14-compliant identification and the ability to obtain such identification. The Texas Legislature, however, was not presented evidence of this disparity before it passed S.B. 14. It therefore has no bearing on whether the Texas Legislature had a discriminatory

[14] Defendants continue to preserve the arguments, for appellate and certiorari review, made before this Court, the Fifth Circuit, and the Supreme Court that S.B. 14 does not have a discriminatory effect under Section 2 of the Voting Rights Act. A petition for a writ of certiorari to review the Fifth Circuit's decision on the discriminatory-effect issue, among others, is currently pending at the Supreme Court. *See* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016).

purpose in enacting S.B. 14, particularly in light of the Legislature's belief to the contrary based on empirical studies.

218. In fact, the Texas Legislature received expert testimony that warned against relying upon the very same database-matching technique employed by Plaintiffs' experts in predicting racial disparities regarding preexisting ID possession. Dr. Toby Moore, the former geographer of the voting section of the Civil Rights Division of the Department of Justice and a project manager for the Carter-Baker Commission on Election Reform, explained:

> There have been kind of three approaches to trying to identify those without IDs and to determine their demographics. The first approach has been to try to match between data bases, between voter registration databases and Department of Motor Vehicle databases, for example. That has generally not proven to be successful. Those databases are very difficult to match between. There is some interesting information to come out of those attempts. But in general, *I would encourage you to avoid any kind of database matching to arrive at your information.*

DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 338:17-339:2 (Mar. 10, 2009) (ROA.72516-17) (emphasis added)).[15] Even if that technique was accepted in subsequent judicial proceedings, the Legislature's reticence to rely upon any

[15] It is true that this witness also criticized studies of turnout in Georgia and Indiana following the adoption of photo ID requirements in those states. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 340:7-18 (Mar. 10, 2009) (ROA.72516-17)). But he did so on the basis that the candidacy of President Obama in 2008 skewed those results. *Id.* (ROA.72518). This criticism, however, does not apply to the University of Missouri study, for example, because it evaluated county-level turnout data in Indiana in 2006, and was published *before* the 2008 election. *See* DEF0024 (Jeffrey Milyo, The Effects of Photographic Identification of Voter Turnout in Indiana: A County-Level Analysis, Institute of Public Policy Publication Report 10-2007 (Nov. 2007) (ROA.78267)); *see also* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 259:16-22 (Mar. 10, 2009) (ROA.72437) (Senator Williams, discussing Milyo's study: "Now what's interesting about this report to me as I reviewed it is, there's been a lot that's been said on this floor about the effect of President Obamas election on the turnout . . . . But this report

such technique when empirical studies showed that voter ID laws did not produce a disparate impact on minorities does not show any discriminatory purpose.

219. Moreover, even if the Texas Legislature would have had access to Plaintiffs' matching studies, those studies would have shown that more non-Hispanic whites lacked S.B. 14-eligible IDs than African-Americans and Hispanics combined. For example, Plaintiffs' expert, Dr. Barreto, testified that the number of white registered voters without acceptable forms of ID under S.B. 14 was 62 percent higher than that of African-American registered voters; for eligible voters, that number was more than *100 percent higher*. Trial Tr. 59:21-60:20 (Sept 4, 2014) (Barreto) (ROA.99291-92).

220. The studies would also have shown that among those who voted in recent elections, S.B. 14's photo-ID requirement would impact more non-Hispanic white voters than African-American and Hispanic voters combined. Dr. Ansolabehere's analysis showed that of those who voted in 2010, 39,940 non-Hispanic white voters lacked a qualifying ID, compared to 13,324 African-American voters and 12,381 Hispanic voters. *See* Declaration of Stephen D. Ansolabehere 98 tbl. IV.4.B (Sept. 16, 2014) (ROA.43324). And of those who voted in 2012, 58,502 non-Hispanic white voters

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is actually—the time period, as I understand it, includes two election cycles. In neither one of those, Mr. Obama wasn't running for president during either one of those election cycles, so this report wouldn't be influenced by that.")). It also does not undermine the concession of the Brennan Center, an opponent of voter ID. *See* DEF0001 (Tex. Leg., House Committee on Elections, 81st Leg., R.S., vol. 1, at 88 (Apr. 6, 2009) (ROA.74635)).

lacked a qualifying ID, compared to 31,218 African-American voters and 23,881 Hispanic voters. *Id.* That disparity existed even after controlling for voters eligible for an exemption from the photo-ID requirement. Dr. Ansolabehere concluded that in 2010, 35,047 non-Hispanic white voters lacked a photo ID and did not qualify for an exemption—more than the combined total of similarly situated African-American voters (10,733) and Hispanic voters (10,259), and more than three times the total of either group alone. *See id.* Similarly, Dr. Ansolabehere determined that in 2012, 49,428 non-Hispanic white voters did not have a photo ID or qualify for an exemption, compared to 24,871 African-American voters and 19,932 Hispanic voters. *See id.*

C. Promoting Confidence in Elections Is a Genuine Concern.

221. As the Supreme Court stated in 2006, in the midst of Texas's effort to enact a voter-ID law:

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. *Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.* Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

Purcell, 549 U.S. at 4 (emphasis added) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)); *see* DEF0002 (Debate on H.B. 218 on the Floor of the House, 80th Leg., R.S., vol. I, at 8:20-9:5 (April 23, 2007) (ROA.76462-63) (quoting *Purcell*)).

222. This concern was echoed by the Carter-Ford Commission, which observed that the 2000 election "shook American faith in the legitimacy of the democratic process." Carter-Ford Commission Report at 17.

223. The same concern was repeated by the Carter-Baker Commission, which concluded that "[t]he electoral system *cannot inspire public confidence* if no safeguards

exist to deter or detect fraud or to *confirm the identity of voters*." Carter-Baker Commission Report at 18 (ROA.73515) (emphasis added).

224. Proponents of voter-ID legislation in Texas were well aware of these concerns, which they shared during consideration of S.B. 14. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 26:7-27:1 (Jan. 25, 2011) (ROA.68939) (S.B. 14's sponsor, Senator Fraser, relying on the Carter-Baker Commission's conclusion in his opening statement)).

225. This concern was even echoed by certain plaintiffs in this case, who testified that a photo-ID requirement gives them more confidence in the electoral process. Trial Tr. 180:6-18 (Sept. 9, 2014) (Espinoza) (ROA.100533); *Id.* at 194:13-17 (Clark) (ROA.100547).

226. Texas voters have expressed their concern with the integrity of the electoral system to their elected representatives, and there is evidence that election fraud in Texas has diminished voter confidence to the point that some individuals have been discouraged from voting at all. Trial Tr. 15:13-24 (Sept. 10, 2014) (Dewhurst) (ROA.100777) ("When we first looked at passing voter I.D., the reason I did that was because I had been concerned for many, many years about low voter turnout in Texas. And I have heard consistently over the last 10 to 12 years that—that many Texans either hesitate to vote or don't vote because they don't think their vote will count because they're concerned about voter fraud.").

227. Legislators who had heard concerns about the integrity of elections understood that their constituents wanted the Legislature to take measures to combat corruption and voter fraud. DEF0001 (Debate on Tex. S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. III, at 116-18 (Mar. 23, 2011) (ROA.71570-72)). Statements on the

floor of the House of Representatives indicate that supporters of the bill were motivated by a desire to combat corruption in the electoral system. *Id.* at 112-16 (ROA.71566-70).

228. Moreover, the Legislature received evidence that "the widespread popularity of voter [identification requirements] suggests [that] the general public is concerned about voter dilution for ineligible voters." DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., 786:23-25 (Mar. 10, 2009) (ROA.72975)); *id.* Exhibit 7 (Milyo Report at 2 (ROA.73372) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007)).

229. As Plaintiffs' own expert, Dr. Minnite, explained, "we want to believe that our elections truly reflect the will of the voter and that are free of corruption. So, it's a very, very important issue that there not be any voter fraud." Trial Tr. 137:14-17 (Sept. 9, 2014) (Minnite) (ROA.100131).

230. The Legislature received evidence that passing a voter identification law could increase participation in the electoral process by enhancing public confidence in elections. Trial Tr. 397:25-398:8 (Sept. 10, 2014) (Fraser) (ROA.101159-60). Among other things, the legislature was informed that,

> [S]cholars of American politics generally agree that voter turnout is determined largely by idiosyncratic factors, such as an individual's intrinsic value of voting (i.e., does he feel a duty to vote) as opposed to political institutions. For this reason, factors that influence trust and confidence in the integrity of the electoral process are generally thought to be important determinants of an individual's decision to vote. For all these reasons, it is theoretically plausible that photo identification requirements increase turnout.

DEF0001 (Tex. Leg., Senate Committee of the Whole (81st Leg.) (Mar. 11, 2009), Exhibit 7, at 2 (ROA.73372) (citations omitted)).

D. In-person Voter Fraud Exists and Is a Genuine Concern.

231. In 2001, the Carter-Ford Commission recognized that voters should be required to present government-issued identification in order to protect the sanctity of the franchise. *See supra,* FOF ¶¶ 55-56.

232. In 2002, the HAVA demonstrated bipartisan recognition in Congress that safeguards to assure that the person casting a ballot is reliably identified as the individual registered are essential to any fair and honest election. *See supra,* FOF ¶¶ 57-61.

233. In 2005, the expert Carter-Baker Commission concluded that, although "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting, but *both occur, and it could affect the outcome of a close election*." Carter-Baker Commission Report at 18 (ROA.73515) (emphasis added); *cf.* Trial Tr. 216:18-217:5 (Sept. 3, 2014) (Wood) (ROA.99148-49) (testimony of Plaintiffs' witness that he once represented a candidate in Llano county who won an election on a coin flip, and that there were documented cases of ineligible voters casting ballots in that election).

234. In 2007, the Department of Justice announced that "whatever its exact incidence, even the prospect of voter fraud may undermine the integrity of the voting process." DEF036 (ROA.78481) (Brief of United States as Amicus Curiae Supporting Respondents at 30, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25)).

235. In 2008, the Supreme Court accepted the Carter-Baker's conclusion that in-person voter fraud is genuine concern. *See Crawford*, 553 U.S. at 195-97. The Texas

Legislature did the same. In fact, Texas's experience with voter fraud was cited to the Supreme Court in justifying Indiana's voter ID law. *See* DEF0001 (Brief of Texas, et al., as Amicus Curiae Supporting Respondents at 3, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25) (ROA.74228)).

236. Between 2005 and 2011, numerous state legislatures across the country demonstrated their concern about in-person voter fraud by adopting voter ID laws. *See supra*, FOF ¶¶ 71-78.

237. In addition, the record demonstrates that voter fraud is a well-recognized problem in Texas and the rest of the country. S.B. 14 was designed to help detect unlawful conduct at polling places, deter those who attempt to unlawfully interfere with the democratic process, and prevent election fraud in the future. Trial Tr. 17:14-18:10 (Sept. 10, 2014) (Dewhurst) (ROA.100779-80); *see also* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 14 at 3 (March 10, 2009) (ROA.73454) (written testimony by former election official Hans A. von Spakovsky that "[t]here are enough incidents of voter fraud to make it very clear that we must take the steps necessary to make it hard to commit. Requiring voter ID is just one such common sense step")).

1. Evidence of voter fraud exists.

238. Nevertheless, there is ample evidence in the record in this case that voter fraud has been documented in Texas, and outside of Texas. Multiple instances of election fraud have been referred to the Texas Attorney General and the United State Attorney General for investigation, and multiple instances of election fraud, including cases involving in-person voter fraud, have been successfully prosecuted. *See, e.g.*, DEF2537 (Dep't of Justice, Elections Crimes Branch, Federal Prosecution of Election Offenses at 41-43 (7th ed. May 2007) (ROA.95242-44)) (describing prosecutions of in-

person and non-citizen voter fraud under 42 U.S.C. § 1973i(c), and noting that federal prosecutors have no jurisdiction to prosecute fraud where there is no federal official on the ballot); Trial Tr. 196:24-197:6 (Sept. 3, 2014) (Wood) (ROA.99128-29) (describing the "scores" of election contests involving illegal voting he has litigated in Texas); *id.* at 216:3-217:18 (ROA.99148-49) (describing illegal and ineligible votes cast in an election that was decided by a coin flip).

239. In 2011, the House Select Committee on Voter Identification and Voter Fraud heard testimony from individuals who had personally witnessed instances of people voting more than once at a single polling place in Texas. DEF0001 (Tex. Leg., House Select Committee on Voter ID and Voter Fraud Hearing, 82d Leg., R.S., vol. II at 181-83, 260-61 (Mar. 1, 2011) (ROA.70559-61, 70638-39)). The House Select Committee heard testimony in 2011 that the Texas Attorney General's Office had investigated approximately 12 cases of voter impersonation since 2002. *Id.* at 323-26 (ROA.70701-04).

240. Major Forrest Mitchell testified in the section 5 lawsuit that he has investigated multiple instances of election fraud that were referred to the Texas Attorney General's Office for investigation since 2005. Mitchell Sec. 5 Dep. 216:17 (ROA.68304).

241. Plaintiffs own voter-fraud expert, Dr. Minnite, found evidence of four instances of in-person voter fraud in Texas since 2011. Trial Tr. 135:1-6 (Sept. 8, 2014) (Minnite) (ROA.100129).

242. Representative Aaron Peña, who voted in favor of S.B. 14 testified that his "campaign worker's father" had "voted against" him despite that worker's father being "deceased." DEF0001 (Debate on S.B. 14 on the Floor of the House, 82d Leg., R.S., vol. III, at 117:7-9 (March 23, 2011) (ROA.71571)).

243. The Texas Legislature was also aware that:

> a grand jury in New York released a report in the mid-1980's detailing a widespread voter fraud conspiracy involving impersonation fraud at the polls that operated successfully for 14 years in Brooklyn without detection. That fraud resulted in thousands of fraudulent votes being cast in state and congressional elections and involved not only impersonation of legitimate voters at the polls, but voting under fictitious names that had been successfully registered without detection by local election officials. This fraud could have been easily stopped and detected if New York had required voters to authenticate their identity at the polls.

DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 14 at 2 (March 10, 2009) (ROA.73453) (written testimony by former election official Hans A. von Spakovsky)).

244. The Texas Legislature also took notice of the Carter-Baker Commission's observation that:

> In Milwaukee, Wisconsin, investigators said they found clear evidence of fraud, including more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses, or voted in the name of a dead person. Moreover, there were 4,500 more votes cast than voters listed.

Id., Exhibit 18 at 4 (ROA.73501).

245. The House Elections Committee heard testimony from Paul Bettencourt, Harris County's Tax Assessor and Acting Voter Registrar, about registration fraud and voting by the deceased in Harris County. House Elections Committee, Interim Report to the 81st Texas Legislature at 40 (Jan. 2009), *available at* http://www.lrl.state.tx.us/scanned/interim/80/EL25he.pdf; *supra* FOF ¶ 191.

246. In addition, it is undisputed that vote harvesting and registration fraud are prevalent in Texas. *See id.*; Trial Tr. 221:17-222:9 (Sept. 3, 2014) (Wood) (ROA.99152-53). While S.B. 14 cannot directly prevent these frauds, it does make them much more

difficult to perpetrate. For example, vote harvesters use the registrations of the elderly, blind, and disabled to vote. *See id.* (ROA.99152-53). But unless these voters have *also* signed up to vote by mail or gone through the process to obtain an exemption from S.B. 14, they would have to vote in person, at which point they would have to show photo ID. S.B. 14 thus helps eliminate some portion of effective vote harvesting. And as Mr. Bettencourt told the House Elections Committee, voter ID would have prevented the voter registration fraud he witnessed from being effective.

247. Both the Criminal Division of the Public Integrity Section of the United States Department of Justice, and the various United States Attorneys' Offices, have prosecuted election fraud crimes, including instances of non-citizen voting (under 18 U.S.C. §§ 611, 911 and 1015) and providing false information to vote (42 U.S.C. § 1973i(c)),

248. [redacted] there may be more instances of voter fraud than is apparent from the face of the exhibits. [redacted]

249. [redacted]

[redacted]

250. [redacted]

[redacted]

251. [redacted]

[redacted]

[redacted]

252. The Chief of the Public Integrity Section, Richard Pilger, submitted a declaration regarding what he asserted to be a lack of in-person voter fraud nationwide. Reply in Support of Motion for Protective Order, Exhibit 2, *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014), ECF No. 390. This declaration, however, suffers from the same database deficiencies as the LIONS and ACTS reports themselves, as Mr. Pilger did nothing but rely on publicly available court records, and the ACTS and LIONS databases. [redacted] Thus, the door is wide open to the possibility that in-person voter fraud has occurred, and there was a perception it was occurring, had a more thorough review been completed by Mr. Pilger.

253. This evidence of in-person voter fraud far exceeds the evidence, or lack thereof, that the Supreme Court held to be sufficient in *Crawford*, which recognized that photo-voter ID laws are justified by evidence of even other types of voting fraud in the enacting State and instances of in-person ballot fraud in other States. *See Crawford*, 553 U.S. at 194-95 (holding that Indiana's law, which addressed only in-person voter fraud, was justified by the threat of voter fraud even though the record contained "no evidence of any such fraud actually occurring in Indiana at any time in

its history"); *id.* at 195 n.12 (alluding to "scattered instances of in-person voter fraud" in other states as justification for Indiana's in-person voter identification requirement).

2. In-person voter fraud is very hard to detect.

254. During the consideration of S.B. 14, Democratic legislators pointed to a lack of a documented cases of in-person voter fraud to argue that any concern about such fraud is mere pretext. *See, e.g.*, *supra*, ¶ 189. This ignores two crucial points:

a. In *Crawford*, the Supreme Court instructed that Indiana's law, which addressed only in-person voter fraud, was justified by the threat of voter fraud even though the record contained "no evidence of any such fraud actually occurring in Indiana at any time in its history." 553 U.S. at 194-95.

b. In-person voting fraud is "incredibly difficult to detect." Mitchell Sec. 5 Dep. 216:21 (ROA.59107); *see also* DEF0001 (Tex. Leg., House Committee of Elections Hearing, 81st Leg., R.S., 51:5-7 (June 14, 2010)); *id.* (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., 235:7-11 (March 10, 2009) (ROA.72413)).

255. Major Mitchell testified that in his experience, the only way to detect in-person voter fraud is if someone inside the polling place recognizes the individual attempting to cast a fraudulent ballot. Mitchell Sec. 5 Dep. 216:23-217:2 (ROA.59107-08).

256. In other words:

> [I]n the absence of a photo I.D. requirement, . . . someone can come to vote with a certificate, a voter registration certificate, and say that they're the person on that certificate and vote with it, and that the only way that it would get caught is if the person who's behind the table

> knows either the name on the voter certificate or knows the person standing in front of the table and knows they're not the same person. So, *absent serendipity, voter impersonation fraud would not be caught*.

Trial Tr. 327:22-328:8 (Sept. 10, 2014) (Ingram) (emphasis added) (ROA.101089-90).

257. A report by the New York Inspector General documenting that 61 out 63 attempts at in-person voter fraud were successful confirms this fear. *See* Trial Tr. 326:17-327:14 (Sept. 10, 2014) (Ingram) (ROA.101088-89).

258. Without requiring some sort of photo identification, it would be nearly impossible to detect impersonation fraud. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 14 (March 10, 2009) (ROA.72388-455) (written testimony by former election official Hans A. von Spakovsky).

3. Conditions ripe for voter fraud exist in Texas.

259. The Carter-Baker Report noted the risk of fraud posed by inflated voter rolls: "Invalid voter files, which contain ineligible, duplicate, fictional, or deceased voters, are an invitation to fraud." Carter-Baker Commission Report at 10 (ROA.73507).

260. The condition of Texas's voter rolls present many opportunities for in-person voter fraud.

a. Texas's inflated voter rolls create a risk of voter fraud.

261. The State's voter registration list includes thousands of ineligible voters. *See, e.g.*, Section 5 Trial Tr. 112:11-19 (July 12, 2012) (Ansolabehere) (ROA.66825) (50,000 deceased voters on registration roll).

262. The Supreme Court has held that finding ways to deal with inflated voter rolls is a neutral, nondiscriminatory state interest in passing voter-identification laws. *See Crawford*, 553 U.S. at 196-97 ("[T]he fact of inflated voter rolls does provide

a neutral and nondiscriminatory reason supporting the State's decision to require photo identification.").

263. The National Voter Registration Act (NVRA) hinders the ability of States to promptly remove persons who have moved out of state from the list of registered voters. Trial Tr. 311:6-25 (Sept. 10, 2014) (Ingram) (ROA.101073). Under the NVRA, a State "shall not" remove a person from the list of registered voters on the ground that he has moved unless the registrant "confirms in writing" that he has moved outside the jurisdiction in which he is registered, or unless the registrant fails to respond to a notice mailed to him and fails to vote in two consecutive federal elections following the notice. *See* 52 U.S.C. § 20507(d)(1).

264. Although the Secretary of State's list of registered voters is the State's official voter-registration roll, voter registration is conducted at the county level. Trial Tr. 312:10-17 (Sept. 10, 2014) (Ingram) (ROA.101074). Counties must update voter registrations, both to add new registrants and remove deceased people. Trial Tr. 313:10-15; 313:25-314:21 (Sept. 10, 2014) (Ingram) (ROA.101075-76). Communications between the Secretary of State's Office and counties are electronic in most cases, but not all, so this process creates the potential for inaccuracies on the State's official list of registered voters. Trial Tr. 315:8-20 (Sept. 10, 2014) (Ingram) (ROA.101077); Trial Tr. 228:1-22 (Sept. 3, 2014) (Wood) (ROA.99160) (discussing "off-line" counties).

265. The Texas voter-registration rolls include names of persons who have died, persons who have moved out of the State, and felons and noncitizens ineligible to vote. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., 563-66 (Mar. 11, 2009) (ROA.72752-55) (Testimony of Harris County official); DEF0001 (Tex. Leg., House Committee on Elections, 82d Leg., R.S. 53:9-20 (June 14,

2010) (Testimony of Ann McGeehan) (ROA.72059); Trial Tr. 318:7-21 (Sept. 10, 2014) (Ingram) (ROA.101080).

266. Counties do not necessarily make an effort to remove ineligible voters. Travis County, for example, refused for many years to remove deceased registrants from its voter rolls. Trial Tr. 318:24-319:5 (Sept. 10, 2014) (Ingram) (ROA.101080-81).

267. When voter-registration rolls contain names of persons who have died and persons who have moved out of the State, an opportunity arises for persons to fraudulently impersonate deceased or non-resident voters absent a requirement that the voter present photo identification when appearing to vote at the polls. Trial Tr. 316:17-18 (Sept. 10, 2014) (Ingram) (ROA.101078).

268. A voter-identification law that permits poll workers to accept non-photo identification, such as utility bill or the voter registration certificate that the Secretary of State mails to each voter's residence, does not detect or deter voter impersonation as effectively as a photo-identification requirement. Trial Tr. 18:11-25 (Sept. 10, 2014) (Dewhurst) (ROA.100780); *accord* DEF036 (Brief of United States as Amicus Curiae Supporting Respondents at 31, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21 & 07-25) (ROA.78482)).

b. Non-citizens on the voter rolls create a risk of fraud.

269. Texas law prohibits non-citizens from voting. Tex. Elec. Code § 11.002(a)(2).

270. Texas has a large non-citizen population comprising persons from all over the world. Today, Texas is experiencing unprecedented immigration—both lawful and unlawful.

271. The presence of non-citizens on the voting rolls also creates the opportunity for voter fraud because non-citizens are not eligible to vote. There is evidence that non-citizens register to vote in Texas and do in fact vote in Texas (and outside of Texas). Judgment of Conviction, *State v. Briseno*, No. 2006-8-6465 (24th Dist. Court, Calhoun County, Tex., June 9, 2009); Trial Tr. 278:8-17 (Sept. 10, 2014) (Patrick) (ROA.101040).

272. Texas law requires evidence of citizenship or other lawful status from persons seeking a state driver's license, consistent with the requirements of the federal REAL ID Act. Trial Tr. 141:16-24 (Sept. 9, 2014) (Peters) (ROA.100494); Trial Tr. 204:14-22 (Sept. 9, 2014) (Rodriguez) (ROA.100557).

273. Texas law prohibits unlawfully present aliens, including those who entered the country but have overstayed their visas, from obtaining any type of driver's license. Trial Tr. 141:16-141:24 (Sept. 9, 2014) (Peters) ROA.100494; Peters Dep. 144:2-5 (ROA.64737). Because a U.S. birth certificate is required, S.B. 14 prohibits non-citizens from obtaining EICs available to citizens free of charge. And although Texas law permits lawful, non-citizen residents to obtain driver's licenses, these licenses expire on the same day as the non-citizen's visa. Trial Tr. 141:25-142:2 (Sept. 9, 2014) (Peters) (ROA.100494-95).

274. Thus, while S.B. 14 may not stop all voter fraud by non-citizens, it limits the opportunities to do so. This is a valid goal of the Texas Legislature.

E. Plaintiffs' Extensive Discovery Into the Private Thoughts and Communications of Legislators Confirmed that the Purpose of S.B. 14 Was to Prevent Fraud and Increase Confidence in the Electoral System.

275. This Court granted plaintiffs unprecedented discovery into the confidential, internal communications of hundreds of current and former legislators and their

staffs. *See, e.g.*, ECF No. 226 (ROA.6502-09) (Order granting motion to compel); ECF No. 182-1 (ROA.5500-12) (United States' first request for document production).

276. There is no dispute that in response to the requests, members of the Texas Legislature produced thousands upon thousands of internal documents and sat for numerous depositions. *See, e.g.*, ECF No. 740-12, at 4-5 (ROA.83316-17) (exemplar subpoena requesting from legislator "[a]ll documents related to communications between, among, or with you, the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, the Department of Public Safety, the office of the Texas Attorney General, any Legislator or Legislators, their staff or agents, lobbyists, groups, associations, organizations, or members of the public concerning the State of Texas's consideration of a requirement that voters present identification to cast a ballot, from January 1, 2005, through November 30, 2010"); ECF No. 254 at 4 (ROA.7229) (United States confirming that its legislator subpoenas "mirror[ed] the United States' First Set of Requests for Production"); ECF No. 251 at 2 (ROA.7143) (noting that prior to any production by individual legislators, "[t]he Office of the Attorney General (OAG)" had already "produced thousands of legislatively privileged documents to the Department of Justice"); Dewhurst Dep. (ROA.60353-421); Patrick Dep. (ROA.64565-647); Duncan Dep. (ROA.61062-127, ROA.67396-459); Fraser Dep. (ROA.67569-648); Williams Dep. (ROA.68804-70); Smith Dep. (ROA.68584-646); Straus Dep. (ROA.68648-98); Bonnen Dep. (ROA.57951-8011); Riddle Dep. (ROA.59381-427, ROA.62219-49); Harless Dep. (ROA.58683-760, ROA.61343-72); Hebert Dep. (ROA.61373-437, 67877-969); McCoy Dep. (ROA.61542-607, ROA.68103-68177); and Beuck Dep. (ROA.57889-950, ROA.59826-94).

277. This Court granted that unprecedented discovery at Plaintiffs' urging that these private communications would be dispositive of whether the Defendants acted with a discriminatory purpose. *See* Hr'g of February 12, 2014, at 29:14-22 (ECF No.

168) (Ms. Baldwin: ". . . and also the legislative documents, which are documents that are at the heart of the United States' claim that this law was passed in part based on a discriminatory intent"); Hr'g of May 1, 2014, at 28:4-10 (ECF No. 263) ("Mr. Rosenberg: . . . [T]hat evidence is going to be very, very important in this case dealing with the intent behind SB 14 itself."); U.S. Opp'n to Mtn to Quash, at 1 (ECF No. 254) (demanding this "vital discovery from current and former legislators").

278. That unprecedented discovery revealed no evidence supporting a discriminatory-purpose finding. After deposing numerous state legislators and legislative staff members, and after reviewing the record of this case, the Plaintiffs are unable to identify any statement made by any Texas legislator or staffer—even internal, private statements that no legislator or staffer could have expected to be disclosed to Plaintiffs—that evinces a desire to harm racial minorities.

279. To the contrary, proponents of S.B. 14 confirmed that they harbored no discriminatory purpose for passing the law.

280. Legislators and their staff uniformly denied that the bill was enacted for the purpose of decreasing the number of voters from any racial, ethnic, or language minority group. Senator Troy Fraser, the sponsor of S.B. 14, and the bill's supporters in the House and Senate, repeatedly stated that their purposes in supporting S.B. 14 were to deter and detect voter fraud and safeguard voter confidence in the electoral system. *See* Trial Tr. 416:5-6 (Sept. 10, 2014) (Fraser) (ROA.101178) ("The purpose was to protect the integrity of the voting box."); Trial Tr. 39:19-40:6 (Sept. 10, 2014) (Dewhurst) (ROA.100801-02) ("It was the intent of the Legislature—it was the intent of the Lieutenant Governor, to pass . . . a photo voter I.D. bill which reduced fraud; and not to repeat myself, I apologize, but to improve the confidence by the voters in Texas in our election process, because I warrant to you, most voters didn't have a lot

of confidence in the validity of their vote . . . because in Texas we have a real problem with low voter turnout."); Harless Dep. 85:19-22 (ROA.61359) ("to provide for the integrity of the in-person voting by showing a photo ID"); Patrick Dep. 56:6-9 (ROA.62109) ("[T]he purpose of the bill was to protect the integrity of the ballot box."); Straus Dep. 49:14-15 (ROA.62533) ("to be certain that those who were casting votes were doing so legitimately"); Dewhurst Dep. 48:22-51:17; 69:3-8; 106:11-15; 122:14-23; 222:2-12; 208:22-209:6 (ROA.60364-65, 60370, 60379, 60383, 60408, 60404-05); McCoy Dep. 37:14-39:18; 138:13-22 (ROA.61548, 61573).

281. Not a single legislator or staff member recalls hearing any statement suggesting that S.B. 14 was enacted to harm racial minorities—or even to give a partisan advantage to the Republican Party. Trial Tr. 355:17-356:1 (Sept. 5, 2014) (Anchia) (ROA.99972-73) (Representative Anchia did not hear anyone make a statement, in public or private, suggesting that S.B. 14 had a discriminatory intent); Trial Tr. 38:23-39:6 (Sept. 5, 2014) (Davis) (ROA.99655-56) (Senator Davis did not hear anyone make a statement, in public or private, suggesting that S.B. 14 had a discriminatory intent); *cf.* McCoy Dep. 37:23-38:5 (ROA.61548) ("Q: [W]ere you ever part of or hear about any conversations about whether the bill would give either party a partisan advantage in elections? . . . A: No.").

282. After reading through every relevant legislators' bill books and office files, and after reading thousands of confidential email communications between legislators, their staff, and their constituents—including emails from legislators' personal accounts and work accounts at their personal places of business outside the Legislature—the plaintiffs have not identified any statement made by any legislator or staff member that evinces a desire to harm racial minorities or to suppress voter turnout in any political or demographic group.

PROPOSED CONCLUSIONS OF LAW

1. Without any evidence of invidious intent from statements made by legislators (even in internal, private communications), Plaintiffs have no choice but to fall back on tenuous circumstantial evidence: discriminatory acts of bygone generations, views of opponents of voter ID laws, past misdeeds by persons unconnected to the Texas Legislature, and the procedures used by S.B. 14 proponents to overcome years of gridlock in the Texas Legislature and enact a voter ID law supported by the great majority of Texans. Much of that evidence, in turn, was rejected by the Fifth Circuit as "infirm," "unreliable," and "speculati[ve]"—in other words, "not probative." *Veasey*, 830 F.3d at 229-30, 232-34. Specifically, the Fifth Circuit expressly held that the following categories of evidence could not be considered in assessing this discriminatory-purpose claim:

1) Acts of discrimination by long-deceased legislators;

2) Acts by persons outside the Legislature;

3) Speculation on intent by legislative *opponents*;

4) Isolated and ambiguous statements made by legislative proponents after enactment;

5) Support for legislation aimed at securing the border or limiting immigration.

Id. 229-34 & n.16.

2. The remaining shreds of circumstantial evidence not already discredited are insufficient to overcome the mountain of direct as well as circumstantial evidence dispelling any notion of a discriminatory motive. Accordingly, this Court will reject the grave charge that the Texas Legislature acted with a racially invidious purpose in enacting S.B. 14.

3. In any event, given the decade-long drive by the Texas Legislature to enhance election integrity and promote Texans' confidence in elections, the overwhelming support for a photo-only voter ID law, the enormous pressure on Republicans from their constituents to enact such a law, and Democratic legislators' refusal to accept a compromise bill allowing for some form of non-photo ID, it was inevitable that S.B. 14 was going to be enacted. Thus, even if a particular legislator or legislators harbored a secret desire to harm voters on account of their race—and there is no proof that any legislator did—such illicit motivation was not necessary to S.B. 14's passage and therefore cannot support a conclusion that the Texas Legislature violated the Fourteenth Amendment when it enacted S.B. 14. *See Veasey*, 830 F.3d at 231 (citing *Hunter v. Underwood*, 471 U.S. 222, 228 (1985)).

I. S.B. 14 WAS NOT ENACTED WITH A DISCRIMINATORY PURPOSE.

4. S.B.14 was not enacted with a racially discriminatory purpose under the Constitution or the Voting Rights Act.

5. "In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed." *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951). Moreover, in issues concerning voting, "there are large incentives to reach for the seeming certainty of the Equal Protection Clause's familiar condemnation of purposeful racial discrimination and draw upon its comforting moral force, rather than confront the task of developing proper standards or concede their ephemeral political character." *Session*, 298 F. Supp. 2d at 473, *vacated sub nom. on other grounds*, *Henderson v. Perry*, 543 U.S. 941 (2004). In turn, "[t]he incentive to couch partisan disputes in racial terms bleeds back into the legislative process," "as members of the 'out' party—believing they can win only in court, and only on a race-

based claim—may be tempted to spice the legislative record with all manner of racialized arguments, to lay the foundation for an eventual court challenge." *Id.* at 473 n.69 (quotation marks omitted).

6. To avoid indulging and encouraging these pernicious incentives, the Judiciary is most wary of "inject[ing] the federal courts into a political game for which they are ill-suited, and indeed in which they are charged not to participate under the most basic principles of federalism and separation of power." *Id.* at 473. "[F]ederal judges are not legislative players"; they "are only the guardians of the boundaries." *Id.*

A. Under Well-Established Supreme Court Precedent, Plaintiffs Bringing a Discriminatory-Purpose Claim Bear the Burden to Show that a Facially Neutral Law Is "Obvious Pretext" for Racial Discrimination—that the Law Is "Unexplainable on Grounds Other Than Race."

7. The Supreme Court, through a trio of well-established precedents, has imposed significantly heightened standards for finding that any public actor—but particularly a State legislature—has acted with a racially discriminatory purpose. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256 (1979); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); *Washington v. Davis*, 426 U.S. 229 (1976).

8. Here, it must be emphasized that what the Court is looking for is *invidious discrimination*; the question is not whether the legislation was the product of bad policy or even partisanship, but rather whether the challenged legislation "was conceived or operated as a purposeful device to further racial discrimination." *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 66 (1980) (plurality op.) (internal quotation marks and alterations omitted); *accord, e.g.*, *Feeney*, 442 U.S. at 274 ("[P]urposeful discrimination is the condition that offends the Constitution.") (internal quotation marks

omitted); *cf. Clements v. Fashing*, 457 U.S. 957, 967 (1982) ("[O]nly those classifications which are invidious, arbitrary, or irrational offend the Equal Protection Clause of the Constitution.").

9. *Davis* upheld an employment test that white applicants passed in proportionately greater numbers than African-Americans, because plaintiffs failed to adduce any proof that racial discrimination entered into the formulation of the test. 426 U.S. at 245-47. Similarly, *Arlington Heights* upheld a zoning board decision denying permission to build low- and moderate-income housing projects because there was no evidence that the decision was racially motivated. 429 U.S. at 269-71. And in *Feeney*, the Court upheld an employment preference for veterans, despite its substantial disparate impact on the basis of sex, because nothing in the record demonstrated that the preference was originally devised or reenacted to harm women's job prospects. 442 U.S. at 279.

10. Non-invidious classifications like those at issue in *Davis*, *Arlington Heights*, and *Feeney* are upheld unless plaintiffs can prove that the justification for the law is "obvious pretext" for racial discrimination—that is, the law "can plausibly be explained only as a [race]-based classification." *Id.* at 272, 275. To carry their burden, Plaintiffs must show that the challenged law "is 'unexplainable on grounds other than race.'" *Easley v. Cromartie*, 532 U.S. 234, 241-42 (2001) (quoting *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999), in turn quoting *Shaw v. Reno*, 509 U.S. 630, 644 (1993), in turn quoting *Arlington Heights*, 429 U.S. at 266)). Simply put, the Court "will not infer a discriminatory purpose" where there were "legitimate reasons" to enact a law. *McCleskey v. Kemp*, 481 U.S. 279, 298-99 (1987).

11. Under these precedents, even proof that a State legislature passed a law knowing it would cause a discriminatory effect is insufficient to establish a discriminatory purpose. As the Supreme Court made clear decades ago:

> Discriminatory purpose . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part *because of*, not merely in spite of, its adverse effects upon an identifiable group.

Feeney, 442 U.S. at 279 (citation, internal quotation marks, and footnote omitted) (emphasis added).

12. The Supreme Court has also "made clear that the underlying . . . decision" of how to protect the integrity and reliability of the electoral process and inspire public confidence in elections—*see Crawford*, 553 U.S. 191-200, 204—"is one that ordinarily falls within a legislature's sphere of competence" (*Easley*, 532 U.S. at 242). *See also Voting for Am., Inc. v. Steen*, 732 F.3d 382, 394 (5th Cir. 2013) (characterizing the duty "to ensure the integrity of the voting process" as the "state's paramount obligation"). "Hence, the legislature 'must have discretion to exercise the political judgment necessary to balance competing interests,' . . . and courts must 'exercise *extraordinary caution* in adjudicating claims that a State has" made the underlying decision "on the basis of race." *Easley*, 532 U.S. at 242 (quoting *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995)); *see also Purcell*, 549 U.S. at 4 ("A State indisputably has a compelling interest in preserving the integrity of its election process. Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.) (internal quotation marks and citation omitted).

B. The Stated Purposes of S.B. 14 Were Protecting the Sanctity of Voting, Avoiding Voter Fraud, and Promoting Public Confidence in the Voting System.

13. Plaintiffs have failed in their efforts to prove that the Texas Legislature enacted S.B. 14 in order to discriminate against minorities: The stated purposes of S.B. 14 were (1) protecting the sanctity of voting, (2) avoiding voter fraud, and (3) promoting public confidence in the voting system.

14. The stated purposes of S.B. 14 are unquestionably legitimate and important. *Crawford*, 553 U.S. at 196 ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process.").

15. Although the Legislature is not required to prove that its policy determinations are justified or that the underlying factual findings are correct, the record shows a clear and legally sufficient basis for the Texas Legislature's decision to enact a photo-voter-ID bill. Even without proof of in-person voter fraud—and there is some proof here—the State has a legitimate interest in taking steps to prevent it. *Crawford*, 553 U.S. at 196 ("While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear."). The fact that the State's voter rolls are inflated, as shown by the record and by the Legislature's attempts to remedy that very problem (*see supra*, FOF ¶¶ 188, 261-268), "provide[s] a neutral and nondiscriminatory reason supporting the State's decision to require photo identification." *Crawford*, 553 U.S. at 196-97.

16. Texas has an independent, and equally legitimate, interest in safeguarding confidence in the electoral process. *Id.* at 197 ("[P]ublic confidence in the integrity of

the electoral process has independent significance, because it encourages citizen participation in the democratic process.").

17. Plaintiffs were unable to meet their substantial burden of showing that the stated justifications for S.B. 14 were "obvious pretext" for racial discrimination. *Feeney*, 442 U.S. at 272.

18. To the contrary, the record only confirmed the Legislature's stated purposes. The 2000 election shook Americans' confidence in electoral systems and brought the issue of election integrity to the fore of the public consciousness. The Texas Legislature immediately set to modernizing and securing its own electoral system. After years of addressing numerous related issues—including mail-in ballot fraud, the security of voting machines, and inflated voter rolls—the Texas Legislature in 2005 turned to the problem of in-person voter fraud. The Texas Legislature's objective was to prevent and deter in-person voter fraud by requiring voters to prove who they are, and "all that happened thereafter flowed from this objective, with the give-and-take inherent in the legislative process along the way." *Session*, 298 F. Supp. 2d at 471.

19. In *Arlington Heights*, the Supreme Court instructed that "contemporary statements by members of the decisionmaking body" are "especially" important in assessing whether a law was enacted with a discriminatory purpose. 429 U.S. at 268.

20. Throughout the Texas Legislature's six-year long consideration of voter ID laws, S.B. 14's proponents publicly, repeatedly stressed that the primary purpose of the law was to prevent and deter voter fraud. *See, e.g.*, *supra*, FOF ¶¶ 205-207.

21. Courts have no authority to second-guess a legislature's stated purpose, absent clear and compelling evidence to the contrary. *See, e.g.*, *Smith v. Doe*, 538 U.S. 84, 92 (2003) (courts "defer to the legislature's stated intent," and "only the clearest

proof will suffice to override" that deference) (internal quotation marks omitted); *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997) ("[W]e ordinarily defer to the legislature's stated intent."); *Flemming v. Nestor*, 363 U.S. 603, 617 (1960) ("[O]nly the clearest proof could suffice to establish the unconstitutionality of a statute on [the] ground [of improper legislative motive].").

22. Nor does the Court have authority to discount the Legislature's purpose based on its own determination that S.B. 14 will not adequately achieve the State's articulated policy goals. *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) ("[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) ("States are not required to convince the courts of the correctness of their legislative judgments.").

C. Direct Evidence Obtained from Legislators Confirmed that S.B. 14 Was Not Enacted for a Discriminatory Purpose.

23. Private statements by S.B. 14's proponents confirm their public statements: the Texas Legislature passed S.B. 14 to prevent and deter voter fraud and safeguard voter confidence. *See, e.g.*, *supra*, ¶¶ FOF 280-282.

24. Recognizing that the legislative history of S.B. 14 was devoid of any mention of a discriminatory purpose, Plaintiffs insisted that their case hinged on the private thoughts and communications of Texas legislators. *E.g.*, United States' Opposition to Texas Legislators' Motion to Quash Subpoenas 1 (Apr. 29, 2014), ECF No. 254 (ROA.7226) ("vital discovery"); Status Conference, Tr. at 29:19-22 (Feb. 12, 2014), ECF No. 168 (ROA.97657) (stating that "the legislative documents . . . are documents that are at the heart of the United States' claim that this law was passed in part based on a discriminatory intent"); Civil Motion Hearing, Tr. at 28:8-9 (May 1, 2014),

ECF No. 263 (ROA.97938) ("[T]hat evidence is going to be very, very important in this case dealing with the intent behind SB 14 itself.").

25. Plaintiffs' demand for access to non-public information—including confidential and legislatively privileged materials held by individual legislators—conflicted with basic principles of separation of powers and federalism. The Supreme Court "has recognized . . . that judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government." *Arlington Heights*, 429 U.S. at 268 n.18 (citing *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 130-31 (1810)). Although the Court has identified "legislative or administrative history" as a "subject[] of proper inquiry in determining whether racially discriminatory intent existed," it made clear that the inquiry should ordinarily be limited to public sources—"contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Id.* at 268.

26. By demanding sworn testimony from individual members of the Texas Legislature, Plaintiffs insisted that this Court intrude on the State's legislative process to the greatest possible degree. The Supreme Court cautioned in *Arlington Heights* that "[p]lacing a decisionmaker on the stand is therefore 'usually to be avoided.'" *Id.* at 268 n.18 (quoting *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971)). And while members of the governmental body might be called to testify in "extraordinary instances," even then, testimony about the purpose of government action "frequently will be barred by privilege." *Id.* at 268.

27. This Court acceded to Plaintiffs' demands, overriding well-founded concerns about judicial restraint and abrogating legislative privilege, because Plaintiffs insisted that unrestricted access to confidential and privileged materials was essential to their "ability to present a complete record." Status Conference, Tr. at 30:13-14 (Feb.

14, 2014), ECF No. 168 (ROA.97658). Over the objection of Defendants, members of the Texas Legislature, legislators' staff, and the Lieutenant Governor produced thousands of documents containing their confidential communications and impressions concerning S.B. 14. Legislators—including the Lieutenant Governor and the Speaker of the House—and legislative staff members were also forced to sit for depositions, where the United States and private plaintiffs asked about their conversations with other legislators, their mental impressions, and their motives for passing S.B. 14. Plaintiffs who received these once-privileged documents included legislators who had opposed S.B. 14, along with counsel for the Texas Democratic Party.

28. Plaintiffs insisted that this extensive discovery was essential to uncover the Legislature's true purpose in passing S.B. 14. But after getting thousands of privileged documents and weeks of intrusive depositions, plaintiffs could not identify a single document or statement expressing an intention to suppress minority voting through S.B. 14. Quite the opposite. This privileged and confidential material—presumably (at least according to Plaintiffs) the most probative evidence of the Legislature's purpose—only confirmed the Legislature's publicly stated purpose and underscored that race had nothing to do with the enactment of S.B. 14. *See supra*, FOF ¶¶ 280-282.

29. Given their unlimited access to legislative materials, Plaintiffs cannot attribute their failure of proof to a successful cover-up. Plaintiffs got everything. Even if legislators tailored their public statements, knowing that a later court challenge was inevitable, Plaintiffs had every opportunity to look behind the public statements and sift through privileged legislative records—material to which plaintiffs in most lawsuits are never given access. But even those private papers and correspondence did not produce *any* evidence that the Legislature enacted S.B. 14 for the purpose of harming minority voters. If there were hidden evidence of discriminatory purpose,

Plaintiffs would have found it. That they found no such evidence requires the Court to conclude that none exists.

30. Between 2005 and 2011, dozens of Texas Senators and Representatives considered and voted in favor of a voter-ID bill. Plaintiffs have no evidence that a single one acted for a racially discriminatory purpose, let alone that a majority did. It is highly "unlikely that such a motive would permeate a legislative body and not yield any private memos or emails." *Veasey v. Abbott*, 796 F.3d 487, 503 n.16 (5th Cir. 2015), *vacated in granting reh'g en banc*, 815 F.3d 958 (5th Cir. 2016), *and on reh'g en banc*, 830 F.3d 216 (5th Cir. 2016) (en banc). It is even less likely that an illicit motive would permeate the Legislature yet remain hidden over the course of four legislative sessions.

31. Although discriminatory intent may be proved by circumstantial evidence in certain cases (*see Arlington Heights*, 429 U.S. at 266), the courts' acceptance of circumstantial evidence is based on the assumption that litigants will not have access to direct evidence. That was not the case here. Plaintiffs were provided with unprecedented access to legislative materials and testimony after insisting that such evidence was essential to their discriminatory-purpose claim. The Fifth Circuit has explained that where legislators provide direct evidence without privilege protections—in contrast to what *Arlington Heights* presumed would occur—"the logic of *Arlington Heights* suggests that the [direct evidence] is actually stronger than the circumstantial evidence." *Price v. Austin Ind. Sch. Dist.*, 945 F.2d 1307, 1318 (5th Cir. 1991). And here, where Plaintiffs conceded that such evidence was at the heart of their claims, the failure of such evidence to reveal even the slightest indication of discriminatory purpose is dispositive.

D. Circumstantial Evidence Confirms that S.B. 14 Was Not Enacted for a Discriminatory Purpose.

32. Even if Plaintiffs' failure to come forth with direct evidence from the unprecedented discovery they obtained were not dispositive, it casts serious doubt on their claims, and it precludes a finding of intentional discrimination absent compelling circumstantial evidence that the Legislature passed S.B. 14 in order to harm minority voters. The record contains no such compelling circumstantial evidence. Plaintiffs' claim of discriminatory purpose must fail because the legislative record, the direct evidence, and substantial circumstantial evidence all confirm that S.B. 14 was not enacted with a discriminatory purpose.[16]

33. In addition to legislative history, the Supreme Court in *Arlington Heights* identified three sources of circumstantial evidence that may be helpful in discovering a legislature's purpose in enacting a policy: the legislature's awareness of a resulting disparate impact, the sequence of events leading up to the decision, and the historical background of the decision. 429 U.S. at 266-67. These three sources of circumstantial evidence, along with others, all support the conclusion the S.B. 14 was not enacted with a discriminatory purpose. Plaintiffs' purported circumstantial evidence of discriminatory purpose is legally and factually insufficient to support their claim of intentional racial discrimination under any standard. It falls far short of meeting their burden to establish that S.B. 14 can only be characterized as "obvious pretext,"

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[16] Defendants continue to preserve, for appellate and certiorari review, the arguments that circumstantial evidence cannot even be examined here because there was no discriminatory effect. *See, e.g.*, *Crawford v. Bd. of Educ. of City of L.A.*, 458 U.S. 527, 544 n.31 (1982) ("Absent discriminatory effect, judicial inquiry into legislative motivation is unnecessary, as well as undesirable." (quoting *Brown v. Califano*, 627 F.2d 1221, 1234 (D.C. Cir. 1980))); *Darensburg v. Metro. Transp. Comm'n*, 636 F.3d 511, 523 (9th Cir. 2011) ("failure to establish . . . discriminatory impact prevents any inference of intentional discrimination").

Feeney, 442 U.S. at 272—that is, as "unexplainable on grounds other than race," *Arlington Heights*, 429 U.S. at 266.

1. The Texas Legislature believed, based on the evidence before it, that S.B. 14 would not have a disparate impact on minority voters.

34. In *Arlington Heights* and *Feeney*, the Supreme Court found that, despite a decisionmaker's awareness of disparate impact on a particular group, there was no showing of discriminatory intent in the formulation or adoption of the actions at issue. *Feeney*, 442 U.S. at 278-79; *Arlington Heights*, 429 U.S. 270-71.

35. Here, Plaintiffs have not even reached that step of the analysis because the Texas Legislature did not have knowledge of S.B. 14's purported impact on minority voters. The Legislature did not know or anticipate that S.B. 14 would prevent anyone from voting, much less that it would disproportionately harm minority voters.

36. To the extent it had evidence of S.B. 14's likely impact, the Legislature had reason to believe that it would not prevent any person from voting. The evidence shows that the Texas Legislature relied on multiple studies and the experiences of other States to conclude that S.B. 14 would *not* disparately impact minorities. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 82d Leg., R.S., at 200:19-201:14 (Jan. 25, 2011) (ROA.68982)); Trial Tr. 24:1-10 (Sept. 10, 2014) (Dewhurst) (ROA.100786); McCoy Dep. 76:12-17 (ROA.61557).

37. In enacting S.B. 14, the Texas Legislature relied on multiple studies as well as the experiences of other states with photo-voter ID laws to conclude that enacting its own photo-voter ID law would not result in disenfranchisement or disproportionately harm minorities:

- Democrats conceded that there was no evidence before the Legislature suggesting that S.B. 14 would have a disparate impact on minorities. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 82d Leg., R.S., at 28 (Jan. 26, 2011) (ROA.70215)).

- The Texas Legislature considered real-world empirical studies—as opposed to statistical estimates—showing that requiring voters to prove their identity with a photo ID did not negatively affect the ability those entitled to vote to do so. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibits 7, 9, and 10 (Mar. 10, 2009) (ROA.73369, 73417, 73423)); Fraser Dep. 72:9-21, 74:13-22 (ROA.63039, 63041).

- The Legislature learned from Plaintiff's own expert, Dr. Ansolabehere, that "exclusions from voting" resulting from Voter ID laws "are exceptionally rare." DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S. Exhibit 9, at 124 (Mar. 11, 2009) (ROA.73420) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007)).

- The Texas Legislature also learned that similar voter ID laws did not result in disenfranchisement as the opponents of those laws—just like opponents of S.B. 14—predicted. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibits 23, 25, and 28 (Mar. 10, 2009) (ROA.73665, 73685, 73703)).

- The Elections Division Director for the Secretary of State of Georgia testified that in the 16 elections that Georgia had held since implementing its voter ID law his office has never received a single complaint that anyone was disenfranchised or turned away from the polls because they lacked photo ID. DEF0001 (Tex. Leg., House Committee on Elections, 81st Leg., R.S., vol. II, at 364:1-365:8 (Apr. 6, 2009) (ROA.74975-76)). He also testified that, despite four years of federal lawsuits, no single individual had alleged that he was substantially burdened by Georgia's voter ID law. *Id.* 367:21-24 (ROA.74978).

- The Indiana Secretary of State testified that "[i]n the five years and eight statewide primary general elections" that he's "been involved with" since the passage of Indiana's voter ID law, "there's been scant evidence of disenfranchisement or discrimination in Indiana." DEF0001 (Tex. Leg., Senate Committee of the Whole, 82d Leg., R.S., at 272:9-12 (Jan. 25, 2011) (ROA.69000)).

- The Texas Legislature also received evidence that passing a voter identification law could increase participation in the electoral process by enhancing public confidence in elections. Trial Tr. 397:25-398:8 (Sept. 10, 2014) (Fraser) (ROA.101159-60); DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7, at 2 (Mar. 10, 2009) (ROA.73372)) (concluding that it is "plausible that photo identification requirements actually increase voter turnout").

38. These facts conclusively show that the Legislature believed that S.B. 14 would not harm minorities. Whether or not the Legislature was ultimately correct about this state of the world is irrelevant in assessing discriminatory purpose. *See Feeney*, 442 U.S. at 278-79 (analyzing whether disparate impact was intentional only *after* determining that the legislature was, in fact, aware that such an impact would result). Even if the Legislature were mistaken about any potential disparate impact, having a mistaken belief about how a law will operate is not evidence that the Legislature harbored a discriminatory purpose.

39. No discriminatory purpose can be inferred from the Texas Legislature's legitimate decision to rely upon expert testimony and the experience of other States over the unsupported speculation of legislative opponents. Plaintiffs' own expert witness testified that, at worst, there is no "consensus regarding the effects of voter ID laws." Trial Tr. 328:8-10 (Sept. 4, 2014) (Burden) (ROA.99560), and the Legislature was aware that opponents of Georgia's photo-voter ID law had issued the same dire warnings and were proven incorrect. *See supra*, FOF ¶¶ 211-212.

40. The Legislature's decision not to give greater weight to speculation by opponents who had proved themselves willing to thwart voter-ID legislation by any means necessary does not suggest that the Legislature harbored a discriminatory purpose. Democratic legislators conceded that they had no evidence to support their claims of disparate impact. *See supra*, FOF ¶ 163.

41. Speculative "warnings" by S.B. 14's opponents have not been borne out by subsequent events. The number of provisional ballots rejected for ID reasons in the elections following enforcement of S.B. 14 was miniscule. *See supra*, FOF ¶¶ 45-49. Plaintiffs have not identified a single voter in the entire State of Texas whom S.B. 14 will prevent from voting. *See supra*, FOF ¶¶ 39-44. And Plaintiffs supplied no proof of a decline in political participation among any group of voters after S.B. 14's implementation.

42. In any event, as already noted, it is not whether the Legislature was *correct* in assessing any future disparate impact that matters in analyzing this discriminatory-purpose claim. What matters in analyzing the Legislature's purposes for enacting S.B. 14 is what the Legislature *believed* to be true. Here, the Legislature had a good-faith basis, supported by lay and expert testimony, to believe that S.B. 14 would not have a disparate impact on minority voters.

43. Moreover, second-guessing the veracity of the Texas Legislature's belief that photo voter ID laws do not disparately impact minorities is antithetical to the "*extraordinary caution*" courts must "exercise . . . in adjudicating claims that a State has" enacted a facially neutral law on a topic within the legislature's competence "on the basis of race." *Easley*, 532 U.S. at 242 (quoting *Miller*, 515 U.S. at 916).

2. Plaintiffs' database-matching studies are not circumstantial evidence of discriminatory purpose.

44. The matching studies provided by Plaintiffs' experts regarding disparities in preexisting ID possession are irrelevant to evaluating discriminatory purpose because those studies were not before the Texas Legislature. *See Feeney*, 442 U.S. at 278-79 (analyzing whether disparate impact was intentional only *after* determining that the legislature was, in fact, aware that such an impact would result). In fact, no

matching studies of any sort were presented to the Legislature, so they cannot establish anything about the Legislature's purpose when it enacted S.B. 14.

45. But even if the Legislature would have had access to the very studies conducted by Plaintiffs' experts concerning possession of S.B. 14 ID, that would not help Plaintiffs for several reasons.

46. First, the Texas Legislature would still have been entitled to credit the information it relied on over studies purporting to show current rates of ID possession. At a minimum, the Legislature's decision to credit that competing testimony does not establish any discriminatory purpose.

47. Second, Plaintiffs' matching evidence showed that just as many (if not more) white registered voters lacked S.B. 14 ID as African-American and Hispanic registered voters. *See supra*, FOF ¶¶ 219-220. Assuming that the rate of ID possession provides a relevant measure of S.B. 14's impact, this fact forecloses a discriminatory-purpose finding under binding Supreme Court precedent: "Too many" white voters "are affected by" S.B. 14 "to permit the inference that the statute is but a pretext for" discrimination. *Feeney*, 442 U.S. at 275. In *Feeney*, the Court stated that the law there could not be explained as a pretext for preferring men over women because significant numbers of those placed at a disadvantage by the law were men. *Id*. The same holds here: S.B. 14's photo ID requirement cannot be explained as a pretext for harming minorities compared to whites because, according to Plaintiffs, hundreds of thousands of white registered voters—more than similarly situated African-Americans and Hispanics *combined*—were also negatively impacted by S.B. 14. *See Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 552 (3d Cir. 2011) (rejecting claim of discriminatory purpose where minorities and whites were both adversely affected by the policy at issue). To put it another way, Plaintiffs can "no more successfully claim

that" S.B. 14 "denied them equal protection than could white [voters] who also" lacked S.B. 14 ID. *Davis*, 426 U.S. at 246.

48. Third, even if minority voters, prior to the enactment of S.B. 14, were disproportionately less likely to have S.B. 14 ID, and therefore predisposed to be negatively impacted by S.B. 14, "[p]redilection does not constitute proof." Samuel Issacharoff, *Ballot Bedlam*, 64 Duke L.J. 1363, 1380 (2015). Possession or non-possession of an S.B. 14 ID at a given point in time is only one of many factors that determines whether S.B. 14 causes an actual negative impact on any person's ability to vote. Lack of a qualifying ID prevents a person from voting only if that person also (a) lacks the underlying documents necessary to obtain an ID, (b) lacks the means to obtain the underlying documents necessary to obtain an ID, (c) is not able to vote without a photo ID, and (d) would have voted but for the lack of a qualifying photo ID. In other words, "[t]he fact that restrictions on the franchise in general—and voter-ID laws in particular—"may "play to the vulnerabilities of discrete communities does not establish that there is any discernible impact, either on overall turnout or on differential turnout among various groups." *Id.* At the very least, it means that an invidious purpose by the Legislature cannot be inferred from rates of preexisting ID possession (which the Legislature was unaware of, in any event).

49. Accordingly, even if the Legislature had known that minority voters were less likely to have an S.B. 14 ID—which it did not—that knowledge would not be evidence of a discriminatory purpose because the lack of ID at one point in time does not imply inability to vote in the future. The Legislature would still have been justified in concluding that S.B. 14 would not have a negative impact on minorities.

50. Representative Smith's statement, years after the enactment of S.B. 14, that he remembered estimating that roughly 700,000 Texas voters lacked a driver license,

Trial Tr. 327:11-329:7 (Sept. 8, 2014) (Smith) (ROA.100321-23), does not help Plaintiffs for at least four reasons.

51. First, there is no evidence that any other legislator received this estimate. Representative Smith testified that he "probably would have mentioned it in committee hearings" (Trial Tr. 329:7-8 (Sept. 8, 2014) (ROA.100323)), but Plaintiffs have never pointed to a transcript evidencing such a mention and Defendants have been unable to locate one. The Fifth Circuit has cautioned against relying on isolated ambiguous statements made by legislators after the enactment of a law. *See Veasey*, 830 F.3d at 234.

52. Second, this estimate says nothing about the racial makeup of the group of voters supposed to lack driver's licenses. Although Representative Smith years later suggested that it was "common sense" that minorities would be more likely to be in this group than whites, this "stray statement[] made by [a single] legislator[] voting for S.B. 14" is "not . . . the best indicia of the Texas Legislature's intent." *Veasey*, 830 F.3d at 234, 236; *cf. United States v. O'Brien*, 391 U.S. 367, 384 (1968) ("What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); *Florida v. United States*, 885 F. Supp. 2d 299, 354 (D.D.C. 2012) (per curiam) (holding that single legislator's statement, during floor debate, "that it should be harder to vote—as it is 'in Africa'" was "not enough to suggest that his purpose, whatever it was, represented the purpose of the Florida legislature as a whole"); *Castaneda-Gonzalez v. Immigration & Naturalization Serv.*, 564 F.2d 417, 424 (D.C. Cir. 1977) ("Statements by individual legislators should generally be given little weight when searching for the intent of the entire legislative body."). And it turned out Representative Smith's "common sense" was incorrect: Plaintiffs' numbers suggest that

those lacking S.B. 14 ID are at least as likely (if not more) to be white rather than Hispanic or African-American. *See supra*, FOF ¶¶ 219-220.

53. Third, a driver's license is only one type of S.B. 14 ID. Knowing that a certain number of people lack one of many compliant forms of ID is of limited use in estimating the impact of S.B. 14.

54. Finally, as discussed above, "[p]redilection does not constitute proof." Issacharoff, *supra*, at 1380. Possessing or not possessing one form of S.B. 14 ID at a given point in time is only one step of many on the way to actually suffering a negative impact on voting. *See also supra*, FOF ¶ 207 n.16.

3. The events leading up to the enactment of S.B. 14 further support the conclusion that it was enacted for legitimate purposes.

55. The Supreme Court has suggested that courts look to "[t]he specific sequence of events leading up the challenged decision" to "shed some light on the decisionmaker's purposes." *Arlington Heights*, 429 U.S. at 267. The events leading up to the adoption of S.B. 14 confirm that the Legislature's purposes were legitimate.

56. The Texas Legislature's push to enact a voter-ID law was not an isolated event either in time or place. The Texas Legislature did not shift from showing no interest in election integrity and then "suddenly . . . change[]" course to enact S.B. 14. *Id.*; *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 541 (1993) (finding invidious purpose where "the city council made no attempt to address the supposed problem before its meeting in June 1987, just weeks after the Church announced plans to open").

57. The enactment of S.B. 14 was part of a long-running nationwide effort to modernize and secure elections. As documented above (*supra*, FOF ¶¶ 52-92), concerns over election integrity and public confidence in elections increased significantly after the 2000 presidential election. The concerns were expressed by citizens, by experts, and by the federal government.

58. In response, Texas embarked on a massive effort to modernize and secure its electoral system: from voting machines, to voter rolls, to mail-in ballot fraud, Texas addressed nearly every aspect of elections. *See supra*, FOF ¶¶ 104-111, 127, 137, 149, 187-188. S.B. 14 was just one part of this effort.

59. Even if S.B. 14 is taken out of context and considered in isolation from other ballot-integrity measures pursued by the Texas Legislature, the sequence of events leading to its passage does not suggest a deliberate act of discrimination. S.B. 14 was itself the product of a *six-year long* effort. *See supra*, FOF ¶¶ 112-201.

60. Moreover, S.B. 14 was just one of hundreds of voter ID bills introduced across the country and one of dozens passed. *See supra*, FOF ¶¶ 52, 71-78.

61. Finally, in the lead-up to the enactment of S.B. 14, there was majority support among Texas citizens identifying as Republicans, Democrats, African-Americans, and Hispanics for requiring a photo ID to vote. *See supra*, FOF ¶¶ 81-92.

62. All of the relevant facts strongly rebut Plaintiffs' baseless suggestion that S.B. 14 was a knee-jerk reaction designed to hurt minorities.

4. The historical background of the enactment of S.B. 14 does not detract from its legitimate purpose.

63. The Supreme Court in *Arlington Heights* also suggested that "a series of official actions taken for invidious purposes" could evidence invidious purpose underlying the action challenged. 429 U.S. at 267.

64. This evidentiary source is limited, however. First, it is limited to actions taken by the decisionmaker whose action is under review. *See Bolden*, 446 U.S. at 74 n.20 (plurality op.); *Veasey*, 830 F.3d at 232. Second, it is limited temporally. "[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful. The ultimate question remains whether a discriminatory intent has been proved in a given case. More distant instances of official discrimination in other cases are of limited help in resolving that question." *Bolden*, 446 U.S. at 74 (plurality op.); *accord Veasey*, 830 F.3d at 232.

65. Accordingly, discriminatory acts by local Texas officials and acts by long-deceased legislators are irrelevant to this inquiry.

66. That leaves Plaintiffs with one purportedly helpful data point: in *Texas v. United States*, 887 F. Supp. 2d 133, 159-66 (D.D.C. 2012), *vacated and remanded on other grounds*, 133 S. Ct. 2885 (2013), a vacated opinion from a three-judge district court purported to find that the 2011 Texas Legislature created two redistricting plans with a discriminatory purpose. That case cannot possibly support a discriminatory-purpose finding here.

67. First, that case was a declaratory judgment action under Section 5 of the Voting Rights Act. Accordingly, the burden was placed on Texas to *disprove* discriminatory intent. *Id.* at 151. In ruling against Texas, the court could only conclude that

Texas failed to carry its burden. Any affirmative finding on discriminatory purpose is nothing more than dicta.

68. Second, as the case citation indicates, the court's decision was vacated. The Supreme Court vacated the decision when it issued *Shelby County*, 133 S. Ct. 2612, which held unconstitutional the coverage formula in Section 4(b) used to determine which jurisdictions were subject to the preclearance requirement in Section 5 of the Voting Rights Act. The State vigorously contested the court's conclusion on discriminatory purpose, but because of *Shelby County*, Texas was unable to take an appeal on the merits of that decision. *See* Appellant's Jurisdictional Statement at 27-33, *Texas v. United States*, 133 S. Ct. 2885 (2012) (No. 12-496) (mem.), 2012 WL 5267659. It would be wholly unfair to hold the court's conclusion against Texas where the State was denied full process. Moreover, the vacatur of the court's judgment deprived the decision of preclusive effect. *See, e.g.*, *United States v. Windsor*, 133 S. Ct. 2675, 2688 (2013) (explaining that when a case is vacated on appeal, "its ruling and guidance [are] then erased"); *Asgeirsson v. Abbott*, 696 F.3d 454, 459 (5th Cir. 2012) ("[V]acated opinions are not precedent."); *see generally* Restatement (Second) of Judgments § 27. Plaintiffs have no independent evidence that Texas's redistricting decisions in 2011 were made with a discriminatory purpose; thus, those redistricting decisions do not support finding a discriminatory purpose behind S.B. 14.

69. In contrast to the paucity of probative historical background evidence suggesting that the Texas Legislature harbored discriminatory motives, there is a substantial amount of such evidence dispelling any such notion.

70. First, several votes taken during consideration of S.B. 14 are unexplainable if S.B. 14's proponents harbored a discriminatory motives:

a. Every member of the Senate who voted for the final version of S.B. 14 also voted to enact an earlier version of S.B. 14 with a provision allowing a person who is indigent and who swears an affidavit that he cannot afford S.B. 14-compliant ID to vote. *See supra*, FOF ¶ 168. If, as this Court found, indigent persons are more likely to be minorities, it would make little sense for those seeking to discriminate to vote for such a law. When this provision was later excised at the behest of *Democrats*, it was replaced with a provision for free EICs that satisfy S.B. 14's photo ID requirement.

b. Every member of the Senate who voted for the final version of S.B. 14 also voted for some ameliorative amendments proposed by Democrats to expand the categories of acceptable IDs and to accept expired IDs in some situations. *See supra*, FOF ¶ 168.

c. Every member of the House who voted for the final version of S.B. 14 also voted to excise from the Senate version a provision that exempted those over 70 from the law. *See supra*, FOF ¶ 185. If, as one of Plaintiff's experts concluded (Lichtman Report at 64-65 (ECF No. 374) (ROA.102133-34)), the elderly are more likely to be white and vote Republican, it would make little sense for those seeking to discriminate to vote to excise such a provision.

71. Second, several votes taken on precursor bills to S.B. 14 are unexplainable if vast numbers of Texas legislators were harboring discriminatory motives:

a. All but one of the senators who voted for the final version of S.B. 14 had previously shown a willingness—by voting for S.B. 362 in 2009—to compromise and allow the use of a variety non-photo IDs to verify a voter's identity. The remaining senator was not a senator in 2009. *See supra*, FOF ¶¶ 197. This breakdown is even more notable when one considers that by this point

Indiana's photo-voter ID law had been upheld by the Supreme Court and Georgia's photo-voter ID law had received DOJ preclearance. *See supra*, FOF ¶¶ 74, 77-78. Texas senators in 2009 could easily have justified a bill requiring only photo ID, and yet they drafted and passed a bill that allowed certain forms of non-photo ID. This is strong evidence that these senators harbored no discriminatory motives.

b. Of the 98 representatives who voted for S.B. 14, 55 had previously shown a willingness—by voting for H.B. 1706 in 2005, H.B. 218 in 2007, or both—to compromise and allow the use of non-photo IDs to verify a voter's identity. *See supra*, FOF ¶¶ 199. All but five of the remaining representatives did not have the opportunity to record a vote on earlier voter ID legislation. *See id.* This breakdown is even more notable when one considers that by 2007 Indiana and Georgia had both enacted photo-voter ID laws. Georgia's voter ID law had received DOJ preclearance. Texas representatives in 2007 could easily have justified a bill requiring only photo ID, and yet they drafted and passed a moderate bill. This is strong evidence that these representatives harbored no discriminatory motive.

72. These votes are proof positive that the goal of voter ID proponents was to get *some* form of fraud-prevention in place, even if that meant sacrificing their preference for a photo-voter ID law to forge a compromise with Democrats. If Plaintiffs are correct that these legislators were on a mission to disenfranchise minorities, it is inexplicable that they did so only after attempting to do exactly what Plaintiffs now say they should have done.

73. The historical evidence overwhelmingly confirms that the Texas Legislature was not harboring a secret discriminatory purpose when it enacted S.B. 14.

5. The principle of parsimony supports the conclusion that the Texas Legislature was not operating with a discriminatory purpose.

74. "In the law, as in life, the simplest explanation is sometimes the best one. So it is here." *Loan Syndications & Trading Ass'n v. S.E.C.*, 818 F.3d 716, 718 (D.C. Cir. 2016) (citation omitted); *see also Acorda Therapeutics Inc. v. Mylan Pharm. Inc.*, 817 F.3d 755, 765 (Fed. Cir. 2016) ("As Ockham's Razor advises, the simpler path is usually best."); *United States v. Navarro-Camacho*, 186 F.3d 701, 708 (6th Cir. 1999) (applying Occam's Razor to pick between competing theories); *Brown v. Vance*, 637 F.2d 272, 281 (5th Cir. 1981) (same).

75. The preference for explanations of observable data that are simple over those that are more complicated is known as the principle of parsimony. *See* Bryan A. Garner, A Dictionary of Modern American Usage at 565 (2003) (defining Occam's Razor, or the law of parsimony, as positing that "the simplest of competing theories is preferable to the more complex ones"); *see also Kelley v. Am. Heyer-Schulte Corp.*, 957 F. Supp. 873, 882 n.12 (W.D. Tex. 1997) (applying "the rule of parsimony not to establish a new standard of proof for the Plaintiff to surmount, but rather as a device to be used after a careful and proper weighing of the evidence"), *appeal dismissed*, 139 F.3d 899 (5th Cir. 1998). A corollary is that a theory must be judged in part on "the extent to which the theory explains, fails to explain, or is inconsistent with other facts that are known to be true." *MSM Indus., Inc. v. Zurich Am. Ins. Cos.*, 1997 WL 260059, at *13 (D. Mass. Mar. 25, 1997), *aff'd*, 125 F.3d 841 (1st Cir. 1997).

76. In this case, there are too many facts that Plaintiffs' discriminatory-purpose theory cannot explain without indulging in needless complexity—while the "obvious alternative" non-discriminatory theory (*Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009)

(quotation marks omitted); *see supra* Conclusion of Law ("COL") ¶¶ 70-71), does explain them. Accordingly, "[a]s between that obvious alternative explanation for" S.B. 14, "and the purposeful, invidious discrimination" Plaintiffs "ask[] [this Court] to infer," the Court chooses the former. *Iqbal*, 556 U.S. at 682 (internal quotation marks omitted).

77. For example, as just noted above, many of the same legislators who voted for S.B. 14 also voted for less stringent versions of voter ID legislation prior to S.B. 14. Plaintiffs' theory of invidious purpose cannot possibly explain this.

78. Also, proponents went out of their way in the conference committee to add into S.B. 14 a section providing for *free* EICs that satisfy the photo-voter ID requirement. If S.B. 14 proponents were targeting the poor because they were more likely to be minorities, the addition of this provision makes no sense.

79. As another example, a half-dozen minority legislators in the Texas House joined their colleagues in supporting S.B. 14. *See supra*, FOF ¶ 200. Plaintiffs' theory cannot explain why minority legislators would vote for a purportedly discriminatory bill. What can explain this, however, is that preventing voter fraud and enhancing public confidence in elections were genuine concerns that motivated the passage of S.B. 14.

80. Likewise, Plaintiffs' theory cannot explain why two Democrats who opposed more lax voter ID bills in 2005 and 2007, switched their votes and supported a stricter voter ID bill in 2011. *See supra*, FOF ¶ 88. What can explain this, however, is that the support for a photo-voter ID bill was strong, and these legislators felt pressure from constituents.

81. Similarly, Plaintiffs' theory cannot explain why three legislators who opposed more lax voter ID bills in 2005 and 2007 when they were Democrats then supported a photo-voter ID law in 2011 after they had switched to the Republican Party. *See supra*, FOF ¶ 92. What can explain this, however, is that Democratic opposition to voter ID was a matter of politics, and that the support for a photo-voter ID bill—particularly among Republican constituents—was strong, and these legislators felt it.

82. Plaintiffs' theory can also not explain why the first voter ID bill after the 2000 presidential election was introduced by a Democrat—a Democrat who went on to oppose similar bills introduced by Republicans. *See supra*, FOF ¶¶ 100-102, 120. What can explain this, however, is that Democratic opposition to voter ID became a political matter.

83. Given its numerous holes, "[t]he conspiratorial theory offered by" Plaintiffs "simply does not make much sense." *Navarro-Camacho*, 186 F.3d at 708. "[T]he stakes are sufficiently high" in judging the motivations of the Texas Legislature in this case that the Court must "eschew guesswork." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (quotation marks omitted). Accordingly, the Court finds comfort in the more easily supported "obvious alternative" non-discriminatory theory. *Iqbal*, 556 U.S. at 682 (quotation marks omitted).

E. Plaintiffs Have Failed to Show that the Legislature's Stated Purposes Were Pretextual.

84. Given the mountain of direct and circumstantial evidence showing that the Texas Legislature did not enact S.B. 14 for an invidious purpose, Plaintiffs bear a heavy burden to show that the Legislature's neutral reasons for enacting the law were

"obvious pretext" for racial discrimination. *Feeney*, 442 U.S. at 272. Plaintiffs' evidence falls far short.

85. Plaintiffs have cobbled together the following shreds of circumstantial evidence with which they try to show to pretext:

a. acts of discrimination in Texas's history;

b. modern acts of discrimination in Texas by persons outside the Legislature;

c. the belief of S.B. 14's opponents that its proponents harbored discriminatory intent;

d. support by S.B. 14 proponents for legislation to restrict immigration and increase border security;

e. the timing of support for voter ID coinciding with an increase in Texas's minority population;

f. the rejection of ameliorative amendments offered by Democrats;

g. procedural irregularities in the consideration of S.B. 14;

h. the failure of the Texas Legislature to address other forms of voter fraud;

i. the paucity of evidence that in-person voter fraud and public confidence in elections were serious problems; and

j. the opinions of their experts.

86. The first category of circumstantial evidence has already been addressed above. *See supra*, COL ¶¶ 63-73. Actions by long-deceased legislators are not probative (*Veasey*, 830 F.3d at 231-33), and more recent legislative activities in Texas confirm that the Legislature is not acting with invidious purposes.

87. The Fifth Circuit has concluded that the second, third, and fourth categories of circumstantial evidence are not probative on this issue. *See Veasey*, 830 F.3d at 229-30, 232-34.

88. None of the evidence in the remaining six categories comes close to satisfying the standard for proving a claim of invidious racial discrimination. Moreover, points five through nine either depend on a false premise, are more plausibly accounted for by non-discriminatory reasons, or both. Finally, the opinions of Plaintiffs' expert witnesses at trial are wholly unreliable in determining the Legislature's purpose when it enacted the law, for a number of similar reasons.

1. The drive to enact voter-ID legislation is most plausibly explained as part of the nationwide push to modernize and secure electoral systems, rather than as a reaction to a growing minority population in Texas.

89. One of the most glaring holes in Plaintiffs' narrative is its timeline. According to Plaintiffs, Republicans were spurred into action to enact a voter ID law, first, by the 2005 announcement by the United States Census Bureau that Texas had that year become a majority-minority state, and, later, by subsequent reports that the minority population was continuing to grow. *See, e.g.*, Trial Tr. 97:11-98:3 (Sept. 2, 2014) (Martinez Fischer) (ROA.98729-30); *id.* 252:16-253:8 (Veasey) (ROA.98884-85); *id.* 36:13-37:5 (Sept. 9, 2015) (Burton) (ROA.100389-90); Davidson Corrected Rpt. ¶¶ 7, 95 (ROA.102464-65, 102514); Lichtman Rpt. at 8-9 (ROA.102077-78). This purported timeline ignores several salient facts:

a. Most notably, this timeline ignores the fact that the Census Bureau's first announcement regarding Texas's status as a majority-state state was made in August 2005. *See* "Texas now a majority-minority state," Austin Business Journal, http://www.bizjournals.com/austin/stories/2005/08/08/daily29.html (Aug. 11, 2005) ("Texas is the newest state to have a majority of its population composed of 'minority' races, the U.S. Census Bureau said Thursday."). This was more than *five months after* H.B. 1706—the first Republican-backed voter ID bill blocked by Democrats—was introduced and

more than *three months after* H.B. 1706 was passed by the Texas House and blocked by Senate Democrats. *See* History of H.B. 1706, Texas Legislature Online, http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=79R&Bill=HB1706 (last visited Nov. 17, 2016).

b. This timeline also ignores the fact that the first modern voter ID bill was introduced by a *Democrat* in *2001*. *See* Tex. H.B. 744, 77th Leg., R.S. (2001) (introduced by Representative King). The forms of ID that would have been acceptable under H.B. 744 are similar to those in H.B. 1706.

c. In addition, this timeline ignores the fact that as the minority population grew in Texas, Republicans were achieving *more* electoral success. In 2001, Republicans were in the minority in the Texas House. By 2011—when, according to Plaintiffs, Republicans were fretting about their coming demise—they had achieved historic majorities in both houses of the Texas Legislature and controlled nearly every statewide office.

d. Finally, given this purported concern, one would expect some hint of worry expressed by Republicans in the Texas Legislature, whether in public or in private. And yet Plaintiffs have found none notwithstanding their invasive discovery.

90. Plaintiffs have developed a theory that (unspecified) Texas Republicans pushed voter-ID legislation to thwart the political power of growing populations, including minorities and women, who tend to vote for Democrats. To promote this theory, they have enlisted the aid of expert witnesses and counsel for the Veasey Plaintiffs. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 445 (March 10, 2009) (testimony of J. Gerald Hebert) (ROA.72623)).

91. At most, Plaintiffs' theory identifies a hypothetical motive that *might* explain the passage of a voter-ID law. But they have produced no evidence tending to prove that that particular motive, out of all the potential reasons for passing voter-ID legislation, actually *does* explain why the Texas Legislature passed S.B. 14. The record contains no evidence that the Texas Legislature in fact passed S.B. 14 for the purpose—even in part—of thwarting the voting power of minority voters (or any other group of voters) and entrenching themselves in power.

92. In contrast to the holes in Plaintiffs' plot, there exists a much more direct explanation for the push for voter ID. As described above, the 2000 presidential election spurred a nationwide drive to enhance election integrity and the public's confidence in elections. *See supra*, FOF ¶¶ 52-61. Texas was a major player in these efforts and enacted numerous laws to combat fraud, protect the integrity of elections, and boost public confidence. *See supra*, FOF ¶¶ 104-111, 127, 137, 149, 187-188. Between 2005 and 2011, the drive for voter ID was becoming a major part of this larger effort, and was endorsed by the Carter-Baker Commission and the federal government. *See supra*, FOF ¶¶ 62-78. In addition to Texas, States around the country enacted, or tried to enact voter ID laws. While this was occurring, the popular support for these laws was increasing significantly across racial and political lines. *See supra*, FOF ¶¶ 71-78.

2. The rejection of some Democratic amendments by S.B. 14 proponents is more plausibly explained by a purpose to deter voter fraud and protect voter confidence, plus the give-and-take of the legislative process, rather than by an intent to discriminate.

93. Much like Plaintiffs' reliance on the timing of S.B. 14, their reliance on the fact that some of S.B. 14 opponents' amendments were rejected is also misplaced.

94. At outset, this portion of Plaintiffs' theory is infirm because a "failure to enact suggested amendments . . . are not the most reliable indications of [legislative] intention." *Bryant v. Yellen*, 447 U.S. 352, 376 (1980).

95. In any event, Plaintiffs' complaint concerning the fate of Democrats' amendments only highlights the fact that many ameliorative amendments by Democrats *were* adopted. *See supra*, ¶ 168. If S.B. 14 proponents were rejecting Democratic amendments in an effort to discriminate, there is no plausible explanation for their decision to adopt or incorporate Democratic amendments that, among other things, expanded the categories of acceptable IDs, provided for the acceptance of expired IDs, and would have allowed an indigency exception to the ID requirement—had Democrats not later objected to and criticized this exception.

96. Moreover, the same legislators who rejected Democrats' amendments in 2011 previously demonstrated a willingness to compromise and enact any number of ameliorative provisions in previous sessions. *See supra*, FOF ¶¶ 197. 199. By 2011, they had learned their lesson. Rather than attempt to compromise only to see Democrats block another voter ID bill with procedural maneuvers, Republican legislators rejected amendments that they viewed as bad policy, unnecessary, or unduly complicating. *See supra*, FOF ¶¶ 165-166, 169-174, 186. With compromise off the table, these legislators could focus on enacting a photo-voter ID law, not because they harbored invidious purposes, but because they viewed it as a good law with strong support from their constituents. *See supra*, FOF ¶¶ 151, 161-162, 182-183, 205-207.

3. The procedural maneuvers associated with the passage of S.B. 14 are most plausibly explained as a reaction to Democratic legislators' intransigence in blocking voter-ID bills in three prior legislative sessions, rather than as the product of discriminatory purpose.

97. Plaintiffs invoke *Arlington Heights*' consideration of "[d]epartures from the normal procedural sequence" (429 U.S. at 267), but the record shows that use of legislative procedural maneuvers was commonplace in the Texas Legislature's consideration of voter-ID bills—as Democrats had used extraordinary tactics to block voter-ID bills for three consecutive legislative sessions before S.B. 14 was passed. As then-Senator Patrick explained, "they used the rules to stop the bill and we used the rules to pass the bill." Trial Tr. 286:9-10 (Sept. 10, 2014) (Patrick) (ROA.101048). Such a response is far from rare—and has been employed by legislators from both major political parties. *See, e.g.*, Paul Kane, *Reid, Democrats trigger 'nuclear' option; eliminate most filibusters on nominees*, Wash. Post (Nov. 21, 2013) ("[Senator Harry] Reid said the chamber 'must evolve' beyond parliamentary roadblocks.").

98. The specific procedures used to pass S.B. 14 directly reflect experience gained over the previous three legislative sessions. In 2011, the Texas Legislature used procedural workarounds—such as avoiding the Senate's two-thirds rule and moving up the House's consideration of S.B. 14 by months to prevent "chubbing"—to prevent Democratic opponents from killing the bill with parliamentary maneuvers as they had done in 2005, 2007, and 2009. Procedural steps taken in 2011 resulted in an up-or-down vote by both Houses of the Texas Legislature, after a thorough public debate, on a voter-ID law supported by the significant majority of Texas citizens.

99. "[C]ontext matters." *Veasey*, 830 F.3d at 237. For six years, Democrats in the Texas Legislature took advantage of procedural rules supposedly designed to promote

comity—not to seek compromise, but to obstinately stonewall efforts to enact the will of the great majority of Texans:

- In 2005, Democratic Senators killed H.B. 1706—a bill that provided for numerous forms of photo and non-photo ID—by threatening to use the two-thirds rule to block consideration. *See supra*, FOF ¶¶ 121, 126.
- In 2007, Democratic Senators again used the two-thirds rule to block consideration of a bill—H.B. 218—that provided for numerous forms of photo and non-photo ID. *See supra*, FOF ¶ 135.
- In 2009, Democrats in the House "chubbed to death" S.B. 362, which provided for numerous forms of photo and non-photo ID. *See supra*, FOF ¶ 148. In doing so, they completely shut down the legislative process, adversely affecting numerous unrelated pieces of legislation. *See id.*

100. Faced with this intransigence and strategic use of procedural rules, the majority of the Texas Legislature had no choice but to respond in kind. These procedural maneuvers had nothing to with discrimination and had everything to do with the getting the job of the Legislature done and finally allowing both Houses to have an up-or-down vote on a voter-ID bill.

101. In any event, Plaintiffs' complaint that S.B. 14 proponents utilized unusual procedural gambits to pass S.B. 14 rests on a false premise. The evidence in this case showed the two-thirds rule—not really a rule at all, but a calendar management tool[17]—was repeatedly set aside to overcome minority intransigence, including *later that same legislative session in 2011* to secure passage of a budget. *See supra*, FOF

[17] Democrats contended that the purpose of the two-thirds rule was to "slow[] stuff down until the issue is ripe, until . . . you do your best to find consensus." Trial Tr. 166:3-5 (Sept. 5, 2014) (Ellis) (ROA.99783). But even if this were true, voter ID had been under consideration for *six years* and it was clear that consensus was not going to be reached. The two-thirds rule had served its purpose and it was time for the issue to receive an up-or-down vote.

¶¶ 123-124. In other words, there was nothing unusual about working around the two-thirds rule when it was being abused.

102. Moreover, this part of Plaintiffs' theory, too, has big holes. For one, the Senate utilized the same workaround in 2009 for S.B. 362, which provided for some forms of non-photo ID. This confirms the "obvious alternative explanation" (*Iqbal*, 556 U.S. at 682 (quotation marks omitted)) that voter ID proponents worked around the two-thirds rule because they were intent on addressing an issue that they and most other Texans considered important. For another, Plaintiffs ignore that opponents of voter ID were the *beneficiaries* of so-called procedural irregularities in 2007 before any work was done on the two-thirds rule. *See supra*, FOF ¶¶ 134-136 (describing the extraordinary re-vote Republicans gifted Democrats in 2007). Plaintiffs have no explanation for either of these inconsistencies.

103. Designating legislation as "emergency" is also not unusual. Every session, the Governor designates bills that he or she wants to assure consideration of, and the mechanism under existing Texas legislative rules to accomplish that is to designate a bill as an "emergency." *See supra*, FOF ¶¶ 153-154. Indeed, in 2011, Governor Perry designated two other matters as "emergency": "Legislation that will provide for a federal balanced budget amendment to the United States Constitution" and "Legislation that requires a sonogram before a woman elects to have an abortion so that she may be fully medically informed." DEF0001 (S.J. of Tex., 82d Leg., R.S. 55 (Jan. 24, 2011) (ROA.68923)). This designation, which allowed for early consideration, was particularly necessary for S.B. 14, because a lot needed to get done in the 2011 session and Democrats proved in 2009 that were willing to shut down the legislative process through "chubbing" at the end of the legislative session in order to block the will of the majority—on the voter-ID bill and all other remaining bills. *See supra*, ¶ 148. In 2011, both political parties agreed that they wanted to get the issue of voter ID behind

them (*see supra*, FOF ¶ 155); that was facilitated by the Governor's emergency designation of S.B. 14.

104. The same is true of the Committee of the Whole in the Senate, which is a regular feature of Senate procedure and was particularly appropriate for consideration of voter ID, an issue that had been discussed repeatedly over the past six years. *See supra*, ¶ 142.

105. Finally, and most importantly, Plaintiffs' complaints about procedure miss the forest for the trees. The inquiry into procedural deviations is actually trying to analyze whether there was an "eagerness" to rush legislation through with limited opportunity for debate and review. *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 229 (4th Cir. 2016); *accord, e.g.*, *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 636-37 (6th Cir. 2016). The exact opposite happened here. Voter ID had been actively debated by the Texas Legislature in the 2005, 2007, and 2009 legislative sessions. And the entire record of the 2009 debate was included in the 2011 legislative record. *See supra*, FOF ¶ 159. In total, the consideration of voter ID between 2005 and 2011 encompasses more than 4,500 pages of transcripts and hundreds of pages of exhibits and written testimony. *See* DEF0001-02 (ROA.68878-77825) (legislative histories of S.B. 14, S.B. 362, H.B. 218, and H.B. 1706). The Republican majority did not use procedural maneuvers to sneak S.B. 14 past potential opponents or avoid public scrutiny. Few laws have received more deliberation.

106. Not only was S.B. 14 enacted only after the Texas Legislature "considered [its] provisions" in the open "for several months before their passage" in the 2011 legislative session alone (*Husted*, 837 F.3d at 636-37; *see supra*, FOF ¶¶ 150-198), the issue of voter ID had received years of debate, with full participation by opponents,

until finally it was put to an up-or-down vote, and passed by a majority of both houses of the Legislature. Indeed, S.B. 14 was not finally passed by the Texas Legislature until May 2011—the final month of that legislative session. This is how democracy is supposed to work. There is nothing about the mode in which S.B. 14 was considered and passed that suggests an ulterior, invidious motive in its adoption.

4. Plaintiffs' complaint that the Texas Legislature failed to address other forms of election fraud is built on a false premise and is irrelevant.

107. Plaintiffs assert racial discrimination based on the 2011 Texas Legislature's focus on in-person voter fraud and not mail-in ballot fraud. *See supra*, FOF ¶¶ 187-189.

108. At the outset, this Court cannot second guess the priorities of the Texas Legislature. Such second-guessing would be antithetical to the "*extraordinary caution*" courts must "exercise . . . in adjudicating claims that a State has" enacted a facially neutral law "on the basis of race." *Easley*, 532 U.S. at 242 (quoting *Miller*, 515 U.S. at 916).

109. This Court need not even approach this thicket because, in fact, the Texas Legislature *did* address mail-in ballot fraud, and, just as Plaintiffs recommend, it did so the session *before* it began to actively debate voter ID bills to address impersonation fraud. In 2003, the Texas Legislature passed H.B. 54, which addressed mail-in ballot fraud in various ways. For example:

a. The law defined, by means of specific examples, conduct that constitutes assisting the voter while the person providing the assistance is in the presence of the voter's ballot or state-issued carrier envelope.

b. The law expanded the offense of illegal voting to include knowingly marking or attempting to mark another person's ballot without that person's consent.

c. The law expanded the offense of unlawfully assisting a voter to include preparing a voter's ballot without direction from the voter and providing assistance to a voter who either has not requested assistance or has not designated that person to provide the assistance.

d. The law prohibited anyone from possessing another person's ballot or carrier envelope without appropriate authority.

e. The law prohibited the acceptance of carrier envelopes originating from an office of a political party or candidate

f. The law made it a state jail felony for anyone to buy, offer to buy, sell, or offer to sell an official ballot, ballot envelope, carrier envelope, signed application for an early-voting mail ballot, or any other election record.

g. The law made it a Class B misdemeanor for a voter to sell his or her ballot.

Act of May 26, 2003, 78th Leg., R.S., ch. 393, § 19, 2003 Tex. Gen. Laws 1633, 1638 (codified at Tex. Elec. Code § 276.010(c)).

110. In addition, in the *same* session that the Texas Legislature enacted S.B. 14, it addressed mail-in ballot fraud *again*. *See supra*, ¶ FOF 187.

111. The Texas Legislature's decision to address mail-in ballot fraud before addressing in-person voter fraud suggests that the Legislature's concern with in-person voter fraud was not pretext. Rather, it was the continuation of the process started after the 2000 presidential election to modernize electoral systems, thus deterring voter fraud and safeguarding voter confidence.

5. Plaintiffs' complaint that the Texas Legislature did not have sufficient evidence of in-person voter fraud or lack of confidence in elections is meritless.

112. Plaintiffs also find evidence of discrimination in the Legislature's focus on in-person voter fraud and boosting public confidence in elections when there was purportedly little evidence justifying the Legislature's concern.

113. This complaint fails out of the gate. First, under *Crawford*, States are not required to present evidence that in-person voter impersonation has occurred at their polls to justify a photo identification requirement for voting. *See Crawford*, 553 U.S. at 194-96.

114. Second, the Texas Legislature concluded that in-person voter fraud and relatively low public confidence in elections were, in fact, problems. The Supreme Court found the same in *Crawford*, and the Fifth Circuit did so in *Veasey* and *Steen*. *Veasey*, 830 F.3d at 249; *Steen*, 732 F.3d at 394 It is therefore not open to Plaintiffs or this Court reach a different conclusion on this legislative fact:

> To put this in legalese, whether [voter fraud is a problem and whether] a photo ID requirement promotes public confidence in the electoral system [are] "legislative fact[s]"—[] proposition[s] about the state of the world, as opposed to . . . proposition[s] about these litigants or about a single state. Judges call the latter propositions "adjudicative facts." On matters of legislative fact, courts accept the findings of legislatures and judges of the lower courts must accept findings by the Supreme Court.

Frank v. Walker, 768 F.3d 744, 750 (7th Cir. 2014) (citations omitted).

115. In any event, there is significant evidence to support both findings of the Legislature. *See, e.g.*, *supra*, ¶¶ 221-230, 232-237, 239, 242-245; DEF0001 (Tex. Leg., Senate Committee of the Whole (82d Leg.) (Jan. 25, 2011), at 26:6-27:4, 507:23-508:22); *id.* (Tex. Leg., House Select Committee on Voter Identification Voter Fraud

Hearing (82d Leg.) (March 1, 2011)), at Vol. I 20:5-13, 22:7-10, 22:22-23:8, 26:13-15); *id.* (Tex. Leg., House Floor Debate (82d Leg.) (March 23, 2011)), Vol. II pp. 23:19-24:1; *id.* (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 211:10-214:10, 281:10-13 (May 10, 2009)). In fact, one of the Hispanic members of the House who voted in favor of S.B. 14 testified that his "campaign worker's father" had "voted against" him despite that worker's father being "deceased." DEF0001 (Tex. Leg., House Floor Debate (82d Leg.) (March 23, 2011)), at Vol. III pp. 117:7-9. And the House heard evidence from Harris County's Tax Assessor and acting Voter Registrar of ballots cast in the name of dead people who remained on the voting rolls—an example of registration and impersonation fraud that would have been prevented by a photo-ID requirement. *See supra*, FOF ¶ 191 (citing House Elections Committee, Interim Report to the 81st Texas Legislature at 40 (Jan. 2009), http://www.lrl.state.tx.us/scanned/interim/80/EL25he.pdf.).

6. The opinions of Plaintiffs' experts on discriminatory purpose are not credible and cannot establish the intent of the Legislature.

116. The final pieces of evidence offered by Plaintiffs are the opinions of their experts, Dr. Davidson and Dr. Lichtman. The reports offered by these experts are little more than rehashes of Plaintiffs' arguments, with the added imprimatur of "experts" on Plaintiffs' desired conclusion. Thus, the opinions of Drs. Davidson and Lichtman are unpersuasive for the same reasons that the Court finds Plaintiffs' other evidence unpersuasive.

117. For example, both experts repeatedly rely on suspect evidence—actions by long-deceased legislators, actions by those outside the Texas Legislature, the opinions

of S.B. 14 opponents, and legislation addressing immigration reform and border security and other issues[18]—in order to reach their respective desired conclusions. *See, e.g.*, Davidson Corrected Rpt. ¶¶ 4-5, 27, 35, 39-40, 46, 57, 72-93 (ROA.102214-15, 102226, 102229, 102231, 102234, 102240-41, 102247-55); Lichtman Rpt. at 5-7, 19, 65-70 (ROA.102074-76, 102088, 102134-39). As the Fifth Circuit instructed, this evidence is not probative. *Veasey*, 830 F.3d at 229-34 & n.16. It is no more appropriate for Plaintiffs' experts to rely on this evidence than it is for Plaintiffs. Importantly, Plaintiffs' experts explicitly based their respective ultimate opinions on this infirm evidence. *See* Davidson Corrected Rpt. ¶¶ 99, 103-06 (ROA.102256-57, 102258-59); Lichtman Rpt. at 70 (ROA.102139). These opinions are fatally undermined by these errors.

118. Each expert's analysis also incorporates errors that betray a misunderstanding of the facts, the operation of the Texas Legislature, or both.

119. For instance, Dr. Davidson found support for his conclusion on discriminatory purpose in his erroneous belief that proponents of S.B. 14 in the House had rejected a proposed amendment to add student IDs to S.B. 14 in a "closed" committee meeting. Davidson Corrected Rpt. ¶ 58 (ROA.102495-96). The meeting to which he refers was open and, more importantly, no amendments were considered at that meeting, which lasted all of three minutes. *See supra*, FOF ¶¶ 179.

120. Likewise, Dr. Davidson considered it important that S.B. 14 proponents in the House rejected "amendments that would have waived all fees for indigent persons who needed documents *to obtain an EIC*." Davidson Corrected Rpt. ¶ 59 (ROA.102496) (emphasis added). But no such amendment was rejected because no

[18] Dr. Lichtman also relies on the 2012 redistricting opinion discussed *supra*, COL ¶¶ 66-68.

such amendment was offered. It would have made no sense to introduce such an amendment because the bill did not provide for EICs at the time amendments were proposed. The EIC provision was added to S.B. 14 in the conference committee, after the House considered amendments. *See supra*, FOF ¶ 195.

121. Dr. Davidson found support for his conclusion on discriminatory purpose in his erroneous belief that "[t]he vote on final passage of [S.B. 14] in the House reflected the same pattern of racial polarization as in the Senate vote." Davidson Corrected Rpt. ¶ 60 (ROA.102496). But a number of minority House legislators voted for S.B. 14. *See supra*, FOF ¶ 200.

122. Dr. Davidson got the facts wrong yet again when he erroneously stated that the Texas Senate "change[d]" the two-thirds rule in 2007. *See* Davidson Rpt. ¶ 22 (ROA.102001). In fact, the Senate *applied* the two-thirds rule in 2007. Initially, the Senate passed a voter-ID bill with the two-thirds rule in place. But when Lieutenant Governor Dewhurst acquiesced to Democratic Senators' demand for a do-over—the only true departure from normal legislative procedures over the course of voter-ID legislation—that the two-thirds rule spelled the demise of a voter ID bill in that session. *See supra*, FOF ¶¶ 134-136.

123. Dr. Davidson ignored another crucial fact when he tried to link the Legislature's concern with voter ID to the growing minority population in Texas. Dr. Davidson notes that the first Republican voter ID bill was introduced the same year that Texas became a majority-minority state, thereby insinuating that Texas Republicans were spurred into action on voter-ID legislation by the threat of a growing minority population. Davidson Corrected Rpt. ¶ 7 (ROA.102464-65). But Davidson's imagined

causal relationship does not line up with the facts. The Census Bureau did not announce this development until after the 2005 legislative session was over. *See supra*, COL ¶¶ 89.

124. Dr. Davidson's participation in this litigation and in the preceding legislative process further undermines his testimony in two ways: (1) it reveals substantial bias; and (2) it casts doubt on his competence to render an opinion on the Texas Legislature's purpose.

125. Davidson's participation in this case and in the legislative process shows clear bias against voter-ID legislation and in favor of its opponents. To begin with, Davidson testified in the Texas Legislature *on behalf of opponents* of voter ID. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Witness List (March 10, 2009) (ROA.72139) (listing Dr. Davidson as a witness against S.B. 362)). In his report to this Court, Dr. Davidson lauded the efforts of voter ID opponents to block the will of a majority of Texans and their representatives as "*heroic*." Davidson Corrected Rpt. ¶ 96 (ROA.102515) (emphasis added). Dr. Davidson was not a neutral arbiter of the policy goals of S.B. 14, much less the Legislature's purpose in enacting the law. Dr. Davidson's lack of neutrality severely detracts from his credibility in opining on the Texas Legislature's purpose in enacting a voter-ID law.

126. While writing his expert report, Dr. Davidson did not interview any members of the Texas Legislature or any other government officials. Davidson Dep. 73:13–23 (ROA.60154). He did, however, consult with a historian in the Voting Rights Section of the Department of Justice. *Id.* at 56:2–17 (ROA.60137). Dr. Davidson shared at least a dozen drafts of his report with the DOJ's historian, who made suggestions, most of which Dr. Davidson incorporated into his report. *Id.* at 59:2–20 (ROA.60140).

127. Davidson's legislative testimony also undermines his claimed expertise in divining the Legislature's purpose. When he testified before the Legislature in opposition to voter ID, he conceded that "it is *impossible* to know the motives of those lawmakers who support" voter ID. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 29, at 6 (March 10, 2009) (ROA.73710) (Dr. Davidson's written testimony) (emphasis added).[19] The impossible apparently became possible once Plaintiffs challenged S.B. 14 in court. Consistent with his personal opposition to voter-ID laws, Davidson offered his opinion that the Texas Legislature intended to discriminate against minority voters when it passed S.B. 14.

128. Dr. Lichtman engages in similarly loose treatment of the facts. For example, he also seems to not know that the EIC provision was added to S.B. 14 in conference. *See* Lichtman Rpt. at 54 (ROA.102123).

129. Dr. Lichtman also places heavy weight on the fact that S.B. 14 allows for the use of handgun licenses to prove identity. *See, e.g.*, *id.* at 24-32, 42-44 (ROA.102093-102101, 102111-13). But handgun licenses were added to the list of qualifying IDs by a Democratic Senator's amendment, which the Senate adopted unanimously. *See supra*, FOF ¶ 168. That decision provides no support for an inference of discriminatory purpose from that decision.

130. Likewise, Dr. Lichtman faults the Texas Legislature for failing to include a provision in S.B. 14 allowing an indigency affidavit to substitute for an ID. *See* Lichtman Rpt. at 40 (ROA.102109). But Republicans in the Senate amended S.B. 14 to

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[19] In a preview of his report to the Court, Dr. Davidson could not get his facts straight in his testimony before the Legislature. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., vol. II, at 536:2-538:15 (March 11, 2009) (ROA.72725-27) (Senator Williams correcting Dr. Davidson's erroneous view that S.B. 362 permitted only photo ID)).

include such a provision at the suggestion of Democratic Senator Wendy Davis. That provision was included in the version of S.B. 14 reported out of committee in the House. It was only excised later in the House, at the insistence of Democrats, who voted for an amendment eliminating an indigency-affidavit provision. *See supra*, FOF ¶¶ 184.

131. Dr. Lichtman also faults the Texas Legislature for allowing voters over the age of 65 to vote by mail, which does not require an ID. *See, e.g.*, Lichtman Rpt. at 64-65 (ROA.102133-34). But he ignores that this was already the law long before photo-voter ID was ever an issue in the Texas Legislature. *See supra* FOF ¶ 12. In addition to blaming the wrong Legislature, Dr. Lichtman fails to consider that most of the plaintiffs and voter-witnesses in this case who complained about having difficulty obtaining S.B-14-compliant ID were *elderly*. *See supra*, FOF ¶¶ 39, 43. Preserving mail-in voting for the elderly goes a long way towards remedying the minimal negative impact Plaintiffs have been able to show in the case. *See id.*

132. Dr. Lichtman also relies on irrelevant facts. He repeatedly cites information that was not before the Texas Legislature when it considered S.B. 14. For example, Dr. Lichtman spends an inordinate amount of space addressing statistics showing that various IDs not included in S.B. 14 are more likely to be held by minorities than certain IDs that were included, such as handgun licenses. *See* Lichtman Rpt. at 27-35 (ROA.102096-104). Yet there is no evidence that the Legislature was aware of any of these alleged statistics. And if the Legislature was not aware of this information, it could not have been a factor in its decision. *See Feeney*, 442 U.S. at 278-79 (analyzing whether disparate impact was intentional only *after* determining that the legislature was, in fact, aware that such an impact would result).

133. Similarly, Dr. Lichtman somehow finds support for discriminatory intent in post-enactment events occurring outside the Legislature. *See* Lichtman Rpt. at 59-63 (ROA.102128-32). Exemplifying the lengths that Dr. Lichtman went to find some support for his desired conclusion, he attributed the views expressed by *musician Ted Nugent* to the Texas Legislature. *See id.* at 69 (ROA.102138). Lichtman cites negative statements about President Obama made by Nugent in 2012 during then-Attorney General Greg Abbott's campaign for governor. Statements by an individual who did not vote on S.B. 14, made long after S.B. 14 had been enacted, while campaigning with another individual who did not vote on S.B. 14, are facially irrelevant to the Texas Legislature's purpose in enacting the law. *See Feeney*, 442 U.S. at 278-79.

134. Finally, both Dr. Davidson and Dr. Lichtman ignore, rather than attempt to explain, evidence that undermines their conclusions. This suggests that both of their opinions suffer from confirmation bias. *See, e.g.*, *Goswami v. DePaul Univ.*, 8 F. Supp. 3d 1004, 1018 n.11 (N.D. Ill. 2014) ("Confirmation bias is the well-documented tendency, once one has made up one's mind, to search harder for evidence that confirms rather than contradicts one's initial judgment.") (internal quotation marks omitted).

135. Dr. Davidson, for example, regularly brings up (and exaggerates) the racial divide of S.B. 14 opponents and proponents in the Texas Legislature, but he ignores the consistent support for voter ID among Texas citizens regardless of race or ethnicity. *See* Davidson Corrected Rpt. ¶¶ 37-38, 51, 60 (ROA.102483-84, 102491, 102496; *supra*, FOF ¶¶ 81, 83-85.

136. Davidson also highlights racial information while ignoring more relevant partisan data. For example, he states that "no minority senators voted in favor of [S.B. 14], and almost all Anglo senators voted in favor." Davidson Corrected Report at ¶ 51 (ROA.102491). His decision to frame the vote in racial terms is odd since the

split in the Senate tracked partisan affiliation perfectly—all Republicans voted for S.B. 14; all Democrats voted against it, regardless of race.

137. Dr. Davidson finds additional support for his conclusion in the rejection of various Democratic amendments, but fails to explain why a Legislature determined to discriminate against minority voters would nonetheless adopt a number of ameliorative amendments proposed by Democrats for the stated purpose of helping minority voters. *See id.* ¶¶ 50, 58-60, 94 (ROA.102491, 102495-96); *see also supra*, FOF ¶¶ 168.

138. Dr. Davidson also finds support for his conclusion in the relatively accelerated pace of consideration of S.B. 14. *See* Davidson Corrected Rpt. ¶ 44 (ROA.102487). But Dr. Davidson fails to account for the fact that the issue of voter ID had been under consideration for *six years* and for the fact that voter ID opponents conceded that, given the years of previous debate on the topic, they were prepared to debate and offer amendments notwithstanding the schedule. *See supra*, FOF ¶¶ 169. Indeed, both political parties wanted to get the voter-ID debate past them early in the 2011 session. *See supra*, FOF ¶¶ 155-156.

139. Both Dr. Davidson and Dr. Lichtman train their focus on the procedural maneuvers that became necessary to allow S.B. 14 to have an up-or-down vote, but make no effort to account for the possibility that proponents of voter ID were left with no other choice than to use these maneuvers given the obstinacy and abuse of procedural rules by opponents in previous legislative sessions. *See* Davidson Corrected Rpt. ¶¶ 42-44, 97-98 (ROA.102486-87, 102515-16); Lichtman Rpt. at 21-23 (ROA.102090-92). Indeed, while Davidson cites proponents' use of procedural maneuvers as evidence of racial discrimination, he lauds opponents' use of procedural maneuvers as "heroic." Davidson Corrected Rpt. ¶ 96 (ROA.102515).

140. Dr. Lichtman, meanwhile, found evidence of bias in the fact that the elderly, who are disproportionately white, are allowed to vote by mail, but he failed to explain why, if the Legislature were biased in favor of elderly white voters, it would eliminate an exemption from the ID requirement for those over 70. *See* Lichtman Rpt. at 64-65 (ROA.102133-34); *supra*, FOF ¶¶ 185. Dr. Davidson went further, somehow concluding that the elimination of this provision, which was to the disproportionate detriment of whites, was *evidence of bias against minorities*. Davidson Corrected Rpt. ¶ 60 (ROA.102496).

141. Both experts also find support for their conclusions in the fact that voter ID became an issue as Texas's minority population was growing. *See* Davidson Corrected Rpt. ¶¶ 7, 95 (ROA.102464-65, 102514); Lichtman Rpt. at 8-9 (ROA.102077). But neither addressed the alternative and more obvious explanation for the timing of voter-ID legislation in Texas: the nationwide push and growing support among Texans for voter-ID laws. *See supra*, FOF ¶¶ 52-92.

142. Similarly, these experts found support for their conclusion in the strictness of S.B. 14, but failed to account for or address the fact that the same legislators who voted for S.B. 14 had previously voted for more lax voter ID bills—thus confirming these legislators had no invidious purposes. *See* Davidson Corrected Rpt. ¶ 41 (ROA.102485-86); Lichtman Rpt. at 20-21, 23-24 (ROA.102089-90, 102092-93); *see also supra*, FOF ¶¶ 197, 199.

143. Both experts also found support for their conclusion in the failure of S.B. 14 to address issues of implementation of the voter ID requirement, but they failed to account for the traditional practice in Texas of leaving issues of implementation to the agencies under the oversight of the Legislature. *See* Davidson Corrected Rpt.

¶¶ 47-49, 59 (ROA.102489-91, 102496); Lichtman Rpt. at 56-57 (ROA.102125-26); *see also supra*, FOF ¶¶ 169-171.

144. Finally, both Dr. Davidson and Dr. Lichtman chose to rely on information not presented to the Texas Legislature that purportedly shows that S.B. 14 will have a disparate impact of minorities, while they chose to ignore information that *was* presented to the Texas Legislature that showed the opposite. *See* Davidson Corrected Rpt. ¶¶ 68-71 (ROA.102499-500); Lichtman Rpt. at 25-35 (ROA.102094-104); *see also supra*, FOF ¶¶ 36-37, 207-215; COL ¶¶ 36-43.

145. Numerous flaws permeate the reports of Drs. Davidson and Lichtman. The Court, therefore, rejects these opinions as unreliable. Regardless, they cannot possibly overcome the direct and circumstantial evidence showing that S.B. 14 was enacted for legitimate purposes and not a racially discriminatory purpose.

II. THE TEXAS LEGISLATURE WAS GOING TO ENACT S.B. 14 REGARDLESS OF ANY PURPORTED SECRET PURPOSE.

146. Even assuming for the sake of argument—contrary to the overwhelming evidence—that Plaintiffs had shown that the Texas Legislature enacted S.B. 14 in some small part on the basis of a secretly held discriminatory purpose, their claim would still fail because Defendants have "demonstrate[d] that the law would have been enacted without this factor." *Hunter*, 471 U.S. at 228.

147. The push for a photo-voter ID law, which began following the 2000 election, was hitting its peak in 2011. By then, nearly 1,000 voter ID bills had been introduced across the country and numerous legislatures had passed such laws. *See supra*, FOF ¶¶ 52-92.

148. In Texas, voter ID was just one additional mechanism in the Legislature's corresponding decade-long push to enhance election integrity and public confidence in elections in Texas. *See supra*, FOF ¶¶ 100-188.

149. By 2011, Republicans exhibited electoral dominance in every part of state government in Texas. *See supra*, FOF ¶¶ 150. And Republican voters were vocally demanding what the population at-large supported: a photo-only voter ID law with minimal loopholes. *See supra*, FOF ¶¶ 89-92. As Plaintiffs' own witness conceded, there was "enormous" "pressure on members of the legislature in 2011 to vote for Senate Bill 14." Trial Tr. 207:2-4 (Sept. 3, 2014) (Wood) (ROA.99139). As Representative Smith put it, "every Republican member of the legislature would have been lynched if" S.B. 14 "had not passed." Trial Transcript 340:1-3 (Sept. 9, 2014) (Smith) (ROA.100334).

150. There is an irony floating just under the surface of this case: if Democrats had been at all interested in compromise as opposed to obstruction from 2005 through 2009, the Texas Legislature almost certainly would have passed a compromise version of a voter ID law that included some forms of non-photo ID. *See supra*, FOF ¶¶ 112-147. But after Democratic legislators had used extraordinary procedural maneuvers to block voter-ID bills in three consecutive legislative sessions, Republicans—who had overwhelming legislative majorities by 2011—had given up on trying to placate Democratic legislators and instead listened to their constituents and voted in line with their policy preference to enact a photo-voter-ID law that would have a greater ability to deter voter fraud and safeguard voter confidence. The result was S.B. 14, and the bill would have been enacted regardless of any other alleged secretly held legislative purpose.

CONCLUSION

S.B. 14 was not enacted with a discriminatory purpose. Judgment will enter for Defendants.

Date: November 18, 2016

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant
Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Chief, General Litigation Division

MATTHEW H. FREDERICK
Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-6407
Fax: (512) 474-2697

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2016, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

Exhibit 10

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANTS' RESPONSE TO PLAINTIFFS' BRIEFS CONCERNING DISCRIMINATORY INTENT

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INTRODUCTION

This Court must reject Plaintiffs' grave charge that the Texas Legislature enacted S.B. 14 with the invidious intent to burden minority voters, for the reasons set forth in Defendants' Proposed Conclusions of Law (ECF Nos. 965-966). Plaintiffs' intentional-discrimination claims fail for at least four independent reasons: (1) Plaintiffs offer no direct evidence of discrimination despite their unprecedented access to the internal private papers, emails, and thoughts of legislators and their staffs (*see* Defs.' Proposed Conclusions of Law ¶¶ 23-31); (2) the record shows that the Texas Legislature was *not* aware that S.B. 14 would disparately impact minority voters and thus Plaintiffs cannot show that the Legislature intended that result (*see id.* ¶¶ 34-54); (3) "[t]oo many" white voters "are affected by" S.B. 14 "to permit the inference that the statute is but a pretext for preferring" white voters "over" minority voters (*Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 275 (1979); *see* Defs.' Proposed Conclusions of Law ¶ 47); and (4) "the circumstantial totality of evidence" (*Veasey v. Abbott*, 830 F.3d 216, 237 (5th Cir. 2016) (en banc)) shows that the Plaintiffs' discriminatory-intent theory is not a plausible explanation for S.B. 14, let alone the requisite *most* plausible explanation (*See* Defs.' Proposed Conclusions of Law ¶¶ 32-145).

Nothing in Plaintiffs' briefs concerning discriminatory intent or their proposed findings of fact undermines these conclusions. Plaintiffs rely in large measure on dis-

puted impact evidence presented at trial that was never before the Texas Legislature.[1] But this evidence does not change the fact that before enacting S.B. 14, the Legislature validly believed that voter ID laws would *not* disparately impact minorities. And on examination, Plaintiffs' remaining purported evidence of discriminatory purpose turns out to be nothing of the sort. The "totality of evidence" (*Veasey*, 830 F.3d at 237) admits of only one conclusion: S.B. 14 was part of decade-long effort to modernize and secure Texas's election system and the culmination of a six-year-long legislative process during which voter ID opponents used every procedural maneuver they could to block the will of the majority of the Legislature and the majority of Texans. The result was the product of "the give-and-take inherent in the legislative process" (*Session v. Perry*, 298 F. Supp. 2d 451, 471 (E.D. Tex. 2004), *vacated sub nom. on other grounds*, *Henderson v. Perry*, 543 U.S. 941 (2004))—not discriminatory intent.

Therefore, "given the fact that" Plaintiffs, as "the party attacking the legislature's decision," bear "the burden of proving" discriminatory purpose—and "given the demanding nature of that burden of proof, and given the sensitivity, the extraordinary caution, that district courts must show to avoid treading upon legislative pre-

[1] Defendants continue to preserve the arguments, for appellate and certiorari review, made before this Court, the Fifth Circuit, and the Supreme Court that S.B. 14 does not have a discriminatory effect under Section 2 of the Voting Rights Act. A petition for a writ of certiorari to review the Fifth Circuit's decision on the discriminatory-effect issue, among others, is currently pending at the Supreme Court. *See* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016).

rogatives"— Plaintiffs have "not successfully shown that race, rather than" the legitimate concern for election integrity and voter confidence, was the purpose for enacting S.B. 14. *Easley v. Cromartie*, 532 U.S. 234, 257 (2001) (citation and internal quotation marks omitted).

BACKGROUND

The Texas Legislature enacted S.B. 14 at the end of 2011 legislative session after the Legislature had debated voter ID bills for six years. At the time, Sections 4(b) and 5 of the Voting Rights Act required that Texas's election laws be precleared by the Department of Justice ("DOJ") before going into effect. The DOJ refused to preclear S.B. 14 because DOJ believed it would have a retrogressive effect on the ability of minorities to vote. *See* Defs.' Resp. to Pls' Proposed Findings of Fact ¶ 24. DOJ did not at that time accuse Texas of enacting S.B. 14 with discriminatory intent. *See id.*

Texas then sought judicial preclearance. *See Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), *vacated*, 133 S. Ct. 2886 (2013). But a three-judge district court refused to preclear S.B. 14, concluding that Texas had not affirmatively shown that the law would not have a retrogressive effect on the ability of minorities to vote. *See id.* Texas disagreed with the court's conclusion and appealed to the Supreme Court. *See* Appellant's Jurisdictional Statement, *Texas v. Holder*, No. 12-1028 (U.S. Feb. 19, 2013). Texas, however, never got a chance to vindicate its arguments because, before its appeal could be heard, the Supreme Court ruled that the preclearance requirement was unconstitutional and vacated the decision Texas was appealing. *See* 133 S. Ct. 2886.

Texas therefore began enforcing S.B. 14. Defs.' Resp. to Pls.' Proposed Findings of Fact ¶ 24. Plaintiffs challenged the law in this Court shortly thereafter and this Court ruled for Plaintiffs on all of their claims, including claims that the Texas Legislature enacted S.B. 14 with the purpose to discriminate against minority voters. On appeal, the Fifth Circuit, among other things, vacated this Court's finding on discriminatory intent, with instructions to "to reevaluate the evidence and determine anew whether the Legislature acted with a discriminatory intent in enacting SB 14." *Veasey*, 830 F.3d at 243. Specifically, the Fifth Circuit expressly held that the following categories of evidence could not be considered in assessing this discriminatory-purpose claim:

1) Acts of discrimination by long-deceased legislators;
2) Acts by persons outside the Legislature;
3) Speculation on intent by legislative *opponents*;
4) Isolated and ambiguous statements made by legislative proponents after enactment;
5) Support for legislation aimed at securing the border or limiting immigration.

Id. 229-34 & n.16. In turn, this Court instructed the parties to submit new proposed factual findings and conclusions of law and responses.

ARGUMENT

After holding that this Court's discriminatory-purpose finding was infirm, the Fifth Circuit instructed this Court to "reevaluate the evidence relevant to discriminatory intent," and to "determine anew whether the Legislature acted with a discriminatory intent in enacting SB 14." *Veasey*, 830 F.3d at 272. This Court should conclude

that Plaintiffs have failed to carry their heavy burden to show that the Texas Legislature enacted S.B. 14 as "obvious pretext" for racial discrimination and that the law can be "plausibly . . . explained only as a [race]-based classification." *Feeney*, 442 U.S. at 272, 275. In the alternative, this Court should conclude that the Texas Legislature would have enacted S.B. 14 notwithstanding any secret purpose.

I. THE LAW-OF-THE-CASE DOCTRINE AND MANDATE RULE DO NOT PERMIT THE COURT TO RELY ON ITS PREVIOUS FACTUAL FINDINGS CONCERNING DISCRIMINATORY INTENT.

In its brief, DOJ discusses the law-of-the-case doctrine and the mandate rule in general terms. *See* DOJ Br. 11. "Under that doctrine, the district court on remand . . . abstains from reexamining an issue of fact or law that has already been decided on appeal." *United States v. Teel*, 691 F.3d 578, 582 (5th Cir. 2012). "A facet or corollary of the law-of-the-case doctrine is the mandate rule." *Id.* at 583. "Under the mandate rule, 'a district court on remand "must implement both the letter and the spirit of the appellate court's mandate and may not disregard the explicit directives of that court."'" *Id.* (alterations omitted) (quoting *United States v. McCrimmon*, 443 F.3d 454, 459 (5th Cir. 2006), in turn quoting *United States v. Matthews*, 312 F.3d 652, 657 (5th Cir. 2002)). "Accordingly, the mandate rule 'prohibits a district court on remand from reexamining an issue of law or fact previously decided on appeal and not resubmitted to the trial court on remand.'" *Id.* (quoting *United States v. Pineiro*, 470 F.3d 200, 205 (5th Cir. 2006) (per curiam)).

DOJ does not overtly seek to apply the law-of-the-case doctrine or mandate rule to any particular point made in its brief. But DOJ does occasionally cite the Fifth Circuit's en banc majority opinion in this case and quote the Fifth Circuit's recitation

of some of this Court's factual findings. *See, e.g.*, DOJ Br. 14, 18, 20-28. To the extent that by doing so DOJ means to imply that this Court on remand may rest on previous factual findings not explicitly rejected by the Fifth Circuit, DOJ is incorrect. In fact, the mandate rule bars such a shortcut.

"[T]he mandate rule prohibits a district court on remand from reexamining an issue of law or fact previously decided on appeal *and not resubmitted to the trial court on remand*." *Teel*, 691 F.3d at 583 (emphasis added) (internal quotation marks omitted). The Fifth Circuit's mandate in this case, which the DOJ ignores, vacated this Court's "judgment that SB 14 was passed with a racially discriminatory purpose" and remanded for this Court "to consider this claim in light of the guidance we have provided in this opinion." *Veasey*, 830 F.3d at 272. In doing so, the Fifth Circuit instructed that the Court could not consider most of the evidence it previously relied on in finding discriminatory purpose, and the Fifth Circuit then ordered this Court to "*reevaluate* the evidence relevant to discriminatory intent," and to "determine *anew* whether the Legislature acted with a discriminatory intent in enacting SB 14." *Id.* (emphases added).[2] After determining that much of the evidence this Court initially relied upon was infirm and could not be considered, the Fifth Circuit then expressly

[2] While DOJ omitted this language from its discussion of the mandate rule in this Court, it quoted the same language to the Supreme Court in arguing that this Court's ongoing review of its discriminatory-purpose claim counsels against granting certiorari. *See* Br. of United States in Opp. 31, *Abbott v. Veasey*, No. 16-393 (U.S. Nov. 28, 2016); *see also* Br. of Marc Veasey, et al., in Opp. 26-27, *Abbott v. Veasey*, No. 16-393 (U.S. Nov. 28, 2016) (suggesting that this Court may need to issue new factual findings concerning the impact of S.B. 14).

"resubmitted to the trial court" (*Teel*, 691 F.3d at 583 (quotation marks omitted)) the remaining factual questions related to discriminatory intent. For this Court to rest on its previous factual findings would be to "disregard the explicit directives of" the Fifth Circuit, which the mandate rule does not permit. *Id.*[3]

II. PLAINTIFFS HAVE FAILED TO PROVE THAT THE TEXAS LEGISLATURE ENACTED S.B. 14 FOR THE PURPOSE OF BURDENING MINORITY VOTERS.

There is and can be no dispute that S.B. 14 "is neutral on its face and rationally may be said to serve a purpose the Government is constitutionally empowered to pursue." *Washington v. Davis*, 426 U.S. 229, 246 (1976). Proving that lawmakers worked together collectively to pass a facially neutral law because of discriminatory motives is not a small task. *See United States v. Cherry*, 50 F.3d 338, 343 (5th Cir. 1995) ("[D]emonstrating a racially discriminatory intent is a difficult burden to bear."). The task grows ever more "problematic" as "we move from an examination of" small, local boards "to a body the size of the" Texas Legislature. *Hunter v. Underwood*, 471 U.S. 222, 228 (1985). Adding to this difficulty is the need to "to eschew guesswork" (*id.* (quotation marks omitted)) and to "exercise *extraordinary caution* in adjudicating claims that a State has" enacted a facially neutral law on a topic within the legislature's competence "on the basis of race." *Easley*, 532 U.S. at 242 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).

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[3] Even if the mandate rule did not foreclose DOJ's implication, the implication would still be incorrect. Although "[a] factual issue . . . could become the law of the case . . . if previously appealed and affirmed as not being clearly erroneous" (*Chapman v. NASA*, 736 F.2d 238, 242 n.2 (5th Cir. 1984)), the Fifth Circuit reviewed and reversed as clear error this Court's ultimate determination on discriminatory intent.

Plaintiffs have a very high hurdle to overcome, but their evidence is nowhere near sufficient. The record shows that the Texas Legislature enacted S.B. 14 for the legitimate purposes of combating voter fraud and promoting public confidence in elections. In turn, Plaintiffs' tenuous circumstantial evidence—much of it distorted and taken of context—does not come close to demonstrating that the Legislature's professed purposes were "obvious pretext" for racial discrimination and that the law can be "plausibly . . . explained only as a [race]-based classification." *Feeney*, 442 U.S. at 272, 275.

A. The Texas Legislature Enacted S.B. 14 for Legitimate Purposes.

Courts "will not infer a discriminatory purpose" where there were "legitimate reasons" to enact a law. *McCleskey v. Kemp*, 481 U.S. 279, 298-99 (1987). Texas enacted S.B. 14—after the Legislature debated voter ID bills for six years–for the purposes of ensuring election integrity and increasing voter confidence in elections. *See* Defs' Proposed Findings of Fact ¶¶ 203-206; Defs.' Proposed Conclusions of Law ¶¶ 13-22. These purposes are indisputably legitimate and explain why S.B. 14 was supported by a number of minority legislators. *See* Defs.' Proposed Findings of Fact ¶ 200.

Plaintiffs question the legitimacy of the Texas Legislature's push for voter ID. *See* DOJ Br. 24-28; Private Pls.' Br. 11-14. But as the Supreme Court has held, "[t]here is *no question* about the legitimacy or importance of the State's interest in counting only the votes of eligible voters," which necessitates "carefully identifying all voters participating in the election process." *Crawford v. Marion Cnty. Elec. Bd.*,

553 U.S. 181, 196 (2008)[4]; *see also id.* at 237 (Breyer, J., dissenting) (crediting Indiana's legitimate need "to prevent fraud, to build confidence in the voting system, and thereby to maintain the integrity of the voting process"). The Fifth Circuit has been just as clear, instructing that the "state's paramount obligation" is "to ensure the integrity of the voting process." *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 394 (5th Cir. 2013); *accord Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("A State indisputably has a compelling interest in preserving the integrity of its election process. Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.") (internal quotation marks and citation omitted). With these pronouncements, it is not open to Plaintiffs or this Court to reach a different conclusion. *See, e.g.*, *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014).

But even if it were open to question, that question is susceptible to the only answer that the history of Texas' voter-ID bills, as well as the contemporaneous statements and post-enactment testimony of legislators, allow: the Texas Legislature was legitimately concerned with election integrity and public confidence, and S.B. 14 was one part of a decade-long effort to address those concerns.

1. The history of voter ID confirms S.B. 14's legitimate purposes.

The 2000 Presidential election and its recount process drew national attention to the problem of antiquated and ineffective voting procedures. As the Supreme Court

[4] All cites to *Crawford* are to the controlling plurality opinion unless otherwise noted.

predicted at the time: "After the current counting, it is likely legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam). And indeed that occurred on both the state and federal level. *See* Defs.' Proposed Findings of Fact ¶¶ 57-78. One of the earliest voter ID bills was introduced in Texas in 2001, by a Democratic legislator. *Id.* ¶¶ 100-103. And between that first bill and the enactment of S.B. 14, the Texas Legislature passed numerous laws to secure its voting machines, its voter rolls, its mail-in ballot procedures, and other aspects of election procedure. *See id.* ¶¶ 104-111, 127, 137, 149, 187-188.

Concern about in-person voter fraud was a natural outgrowth of this nationwide effort. *See id.* ¶ 52, 54. Contrary to the implication of Plaintiffs' claim, the push for voter ID did not spring forth from the dark recesses of racism; it sprang from the recommendations of bipartisan commissions of experts. *See id.* ¶¶ 55-56, 62-70. Between 2001 and 2011, nearly 1,000 voter ID bills were introduced across the country, and numerous legislatures passed such laws. *See id.* ¶¶ 52-92. Meanwhile, public support for requiring voters to identify themselves with a photo ID was growing across the country and in Texas. *See id.* ¶¶ 79-88.

Given (1) *Bush v. Gore*, (2) *Crawford*, (3) *Steen*, (4) the recommendations of bipartisan commissions, (5) the numerous voter ID laws introduced and enacted in other states, and (6) the widespread public support for requiring a photo ID to vote, "the legitimate noninvidious purposes of" S.B. 14 "cannot be missed." *Feeney*, 442 U.S. at 275; *see also Lee v. Va. State Bd. of Elec.*, --- F.3d ---, 2016 WL 7210103, at *7 (4th

Cir. Dec. 13, 2016) (affirming rejection of discriminatory-intent claim where legislature enacted voter-ID law on the basis of "some evidence of voter fraud," the Carter-Baker report, and public support for voter ID laws); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 553 (3d Cir. 2011) (explaining that the fact that "[t]he decision to redistrict was born of a capital improvement program intended to modernize every school in the district" suggested that it was not the result of discriminatory intent); *Hayden v. Paterson*, 594 F.3d 150, 167 (2d Cir. 2010) (explaining that a voting law's adoption in numerous other states "and its widespread support" show that it "is more likely the product of legitimate motives than invidious discrimination") (internal quotation marks omitted).

Plaintiffs ignore this historical evidence, so they have no explanation for it.

2. Contemporary legislative statements show that the Texas Legislature enacted S.B. 14 to enhance election integrity and improve public confidence in elections.

The Supreme Court has instructed that "contemporary statements by members of the decisionmaking body" are "highly relevant" to the question of discriminatory purpose. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977). The contemporary statements of voter ID proponents show that S.B. 14 was enacted for "legitimate noninvidious purposes." *Feeney*, 442 U.S. at 275.

Over the six years that voter ID was under consideration by the Legislature, proponents consistently cited the need for a voter ID law to enhance election integrity and promote public confidence in elections. Defs.' Proposed Findings of Fact ¶ 205. Even voter ID *opponents* at the time recognized that proponents had no hidden agenda. *See id.* ¶¶ 161-162, 206.

a. Plaintiffs try to undermine this evidence with supposed inconsistencies by legislators regarding the relationship between voter ID laws and voting by non-citizens. *See* DOJ Br. 27-28, Private Pls.' Br. 13. But even if statements by a handful of individual legislators in 2011 shifted away from stressing the risks of non-citizen voting, this would only serve to highlight the continued consistency of the legislators' concern about election integrity and public confidence. *See* Defs.' Proposed Findings of Fact ¶¶ 161-162, 205-206. In any event, as Plaintiffs themselves acknowledge, there actually was *no* inconsistency, as concerns regarding non-citizen voting—which S.B. 14 can help to prevent (*see id.* ¶¶ 269-274)—*were* expressed during and immediately after the consideration of S.B. 14. *See* Pls.' Proposed Findings of Fact ¶¶ 196, 198-199; DOJ Br. 28. Not surprisingly then, the evidence relied on by Plaintiffs (*see* Pls.' Proposed Findings of Fact ¶ 192 (citing PL271 and PL275)) for their assertion that legislators were "instructed . . . to no longer rely on this rationale" (DOJ Br. 28) shows no such thing. The Bryan Hebert email from PL275 states that "[w]e are not doing this to crack down on illegals" (ROA.38994) but says nothing about the separate topic of non-citizen voting. And the other Hebert email relied on by Plaintiffs provided talking points that hit on, among other things, the problem of "non-citizen[]" registrants. PL271 (ROA.38982). Non-citizen voting continued to be a concern of legislators, although never reaching the level of their concern over in-person voter fraud and voter confidence.

b. Plaintiffs also question the veracity of legislators' concerns based on what Plaintiffs assert was insufficient evidence of voter fraud or lack of confidence in the

election system to justify a change in the law. *See* DOJ Br. 24-25, Private Pls.' Br. 11-12. Plaintiffs' argument, however, rests on the false premise that the Texas Legislature needed concrete evidence before it could act. The Supreme Court in *Crawford* rejected an identical argument, confirming Indiana's legitimate interest in preventing in-person voter fraud despite "[t]he record contain[ing] *no evidence* of any such fraud actually occurring in Indiana at any time in its history." 553 U.S. at 194 (emphasis added). And the Supreme Court further concluded that despite the absence of evidence, Indiana's voter ID law served its legitimate interest in increasing public confidence in elections. *Id.* at 197. "[T]here is no way [voter ID laws] could promote public confidence in Indiana (as *Crawford* concluded) and not in [Texas]." *Frank*, 768 F.3d at 750.

Plaintiffs' argument fails for the additional reason that the Legislature did, in fact, have significant evidence of in-person voter fraud and of vulnerabilities that made its system more susceptible to in-person voter fraud. *See* Defs.' Proposed Findings of Fact ¶¶ 238-246, 265. In addition, as Plaintiffs acknowledge, the Legislature had evidence that there exists fraud generally in the election system. *See* Pls.' Proposed Findings of Fact ¶¶ 176-177; DOJ Br. 25. The Supreme Court explained that fraud other than in-person voter fraud justifies a voter-ID law because it "demonstrate[s] that not only is the risk of voter fraud real but that it could affect the outcome of a close election." *Crawford*, 553 U.S. at 196. On top of this evidence of fraud, the Texas Legislature had the conclusion of the bipartisan Carter-Baker Commission—endorsed by the Supreme Court in *Crawford*—that fraud does occur, that it

could affect the outcome of a close election, and that requiring photo ID can prevent such fraud. *See* Defs.' Proposed Findings of Fact ¶¶ 62-70; *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 636 (6th Cir. 2016) (fact that contours of legislation arose from the recommendation of a bipartisan commission suggests that there was no discriminatory intent). The Legislature likewise had before it the Supreme Court's pronouncements in *Purcell* that "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government," and "[v]oters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." 549 U.S. at 4 (internal quotation marks and citation omitted); *see* Defs.' Proposed Findings of Fact ¶ 70. The Legislature was entitled to rely on these conclusions and was justified in acting to prevent in-person voter fraud based upon the evidence before it. *See Lee*, 2016 WL 7210103, at *7 (affirming rejection of discriminatory-intent claim where legislature enacted voter-ID law on the basis of "some evidence of voter fraud," the Carter-Baker report, and public support for voter ID laws).

c. Finally, Plaintiffs question the veracity of legislators' concern with voter fraud because S.B. 14 addressed only in-person voter fraud and did not also address mail-in ballot fraud. DOJ Br. 4, 25-26; Private Pls.' Br. 2, 12-13.

First off, if the Texas Legislature had chosen to prioritize in-person voter fraud over mail-in ballot fraud, that was its legitimate choice to make without second-guessing by Plaintiffs or the courts: "A legislature may address a problem 'one step at a time,' or even 'select one phase of one field and apply a remedy there, neglecting

the others.'" *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972) (rejecting claim of discriminatory intent) (quoting *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955)). "So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of" election integrity "are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them." *Id.* at 546-47. Moreover, questioning the Legislature's priorities would not comport with the "extraordinary caution" courts must "exercise . . . in adjudicating claims that a State has" enacted a facially neutral law on a topic within the legislature's competence "on the basis of race." *Easley*, 532 U.S. at 242 (quoting *Miller*, 515 U.S. at 916); *see also Session*, 298 F. Supp. 2d at 473 ("[F]ederal judges are not legislative players.").

In fact, however, the Texas Legislature *did* prioritize mail-in ballot fraud, addressing that issue *before* it addressed in-person voter fraud. *See* Defs.' Proposed Findings of Fact ¶ 106. The Texas Legislature went on to address it twice more before the end of the 2011 session. *See id.* ¶¶ 137, 187. Accordingly, this imagined discrepancy by Plaintiffs does not undermine the veracity of legislators' concern with voter fraud.

3. The unprecedented internal legislative discovery provided Plaintiffs further confirms that the Texas Legislature enacted S.B. 14 to enhance election integrity and improve public confidence in elections.

This Court provided Plaintiffs unprecedented access to the internal private papers, emails, and thoughts of legislators and their staffs in Plaintiffs' effort to under-

mine the contemporaneous statements of legislators showing that S.B. 14 was enacted for a legitimate purpose. *See* Defs.' Findings of Fact ¶¶ 275-276. The Court did so on the basis of Plaintiffs' insistence that such direct evidence was vital to their case. *Id.* ¶ 277. In turn, these thousands of pages of documents and hours and hours of depositions confirmed that the Texas Legislature did *not* enact S.B. 14 in order to burden minority voters. *Id.* ¶¶ 278-281. Plaintiffs' concession that their accusation of discriminatory intent rises or falls based upon direct evidence, along with the Fifth Circuit's common-sense instruction that such direct evidence, when available, "is actually stronger than . . . circumstantial evidence" (*Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1318 (5th Cir. 1991)), mandates rejection of Plaintiffs' intent claims. *See* Defs.' Proposed Conclusions of Law ¶¶ 23-31. In other words, given that this sweeping discovery occurred—the opposite of what happens in most cases, as the Supreme Court recognized in *Arlington Heights* (429 U.S. at 268 & n.18)—Plaintiffs should be held to what it proved: that the Texas Legislature enacted S.B. 14 for the valid reasons of deterring voter fraud and safeguarding voter confidence.

B. Plaintiffs Have Failed to Carry their Heavy Burden to Show that the Texas Legislature's Legitimate Purposes were Obvious Pretext and that S.B. 14 can Plausibly Be Explained Only as a Race-Based Classification.

The Supreme Court has set forth certain factors that may be considered in an ordinary case when assessing whether circumstantial evidence can prove discriminatory purpose: the legislature's awareness of a resulting disparate impact, the sequence of events leading up to the decision, and the historical background of the decision. *Arlington Heights*, 429 U.S. at 266-67. But this is no ordinary case. Because

"the legitimate noninvidious purposes of" S.B. 14 "cannot be missed" (*Feeney*, 442 U.S. at 275), and because the "highly relevant" contemporaneous statements of S.B. 14 proponents (*Arlington Heights*, 429 U.S. at 268) and the direct evidence obtained during legislative discovery show that these noninvidious purposes drove the enactment of S.B. 14, Plaintiffs face an insurmountable hurdle in trying make these legitimate purposes out to be "obvious pretext" and show that S.B. 14 can be "plausibly . . . explained only as a [race]-based classification." *Feeney*, 442 U.S. at 272, 275.

In any event, none of the *Arlington Heights* factors support Plaintiffs—even the scraps of evidence that Plaintiffs selectively pluck from a century of Texas history and six years of legislative consideration of voter ID lose their persuasiveness under the slightest scrutiny.

1. The Texas Legislature relied on studies and the experiences of other states to legitimately conclude that voter ID laws would not disparately impact minority voters.

The Supreme Court has made clear that a law's disparate impact is not sufficient to show that such impact was intended. *See Feeney*, 442 U.S. at 278-79; *Arlington Heights*, 429 U.S. at 266; *Washington*, 426 U.S. at 242; *see also Arlington Heights*, 429 U.S. at 266 n.15 ("In many instances, to recognize the limited probative value of disproportionate impact is merely to acknowledge the heterogeneity of the Nation's population.") (internal quotation marks omitted). Rather, to prove discriminatory intent, Plaintiffs must show that the Texas Legislature enacted S.B. 14 "'because of,' not merely 'in spite of,' its adverse effects upon" minority voters. *Feeney*, 442 U.S. at 279. But the evidence in this case shows that the Texas Legislature was *not* aware that S.B. 14 would disparately impact minority voters. Because it is not possible to

act "because of" (*id.*) knowledge one does not have (*see Raytheon Co. v. Hernandez*, 540 U.S. 44, 54 n.7 (2003) (there was no possibility of disability discrimination where the decisionmaker was unaware of plaintiff's disability)), Plaintiffs' failure to prove that the Texas Legislature believed that S.B. 14 would disparately impact minority voters dooms their claims.

a. To the extent that the Texas Legislature had evidence of S.B. 14's likely impact, the Legislature had reason to believe that it would not prevent any person from voting. The evidence shows that the Texas Legislature relied on multiple studies and the experiences of other States to conclude that S.B. 14 would *not* disparately impact minorities. *See* Defs.' Proposed Findings of Fact ¶¶ 207, 214; Defs.' Proposed Conclusions of Law ¶ 37. Whether or not the Legislature was ultimately correct about this state of the world is irrelevant in assessing discriminatory purpose. *See Feeney*, 442 U.S. at 278-79 (analyzing whether disparate impact was intentional only *after* determining that the legislature was, in fact, aware that such an impact would result); *see also Lee*, 2016 WL 7210103, at *9 (affirming rejection of discriminatory-intent claim against voter ID law where "legislature did not call for, nor did it have, . . . data" regarding rates of ID possession by race in the State). Even if the Legislature were mistaken about any potential disparate impact, having a mistaken belief about how a law will operate is not evidence that the Legislature harbored a discriminatory purpose.

b. Plaintiffs contend that S.B. 14's disparate impact on minorities was "inevitable." DOJ Br. 19; Private Pls.' Br. 7. But this view was rejected by Plaintiffs' *own*

expert, who testified that, at worst, there is no "consensus regarding the effects of voter ID laws." Trial Tr. 328:8-10 (Sept. 4, 2014) (Burden) (ROA.99560). Another of Plaintiffs' experts authored a study, which came to the attention of the Legislature, and which concluded that the effect of voter ID laws, even strict ones, was "too small to be of practical concern." Defs.' Proposed Findings of Fact ¶ 37. And yet another of Plaintiffs' experts has conceded that although her "sympathies lie with the plaintiffs in the voter ID cases," she had to admit that "the existing science regarding vote suppression is incomplete and inconclusive." DEF0022 (Robert S. Erikson & Lorraine C. Minnite, Modeling Problems in the Voter Identification-Voter Turnout Debate, 8 Election Law Journal 85, 98 (2009)) (ROA.78232). Indeed, there remains legitimate disagreement *in this case* over whether S.B. 14 does, in reality, disparately impact minority voters. *See, e.g.*, Defs.' Proposed Findings of Fact ¶¶ 45-51; Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016).[5] Nothing was inevitable, and the Texas Legislature was entitled to believe, as it did, that S.B. 14 would not disproportionately harm minority voters.

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[5] *Cf. Frank*, 768 F.3d at 748 (finding that the suggestion that 300,000 Wisconsin registered voters lacked acceptable ID to be "questionable; the district judge who tried the Indiana case rejected a large estimate as fanciful in a world in which photo ID is essential to board an airplane, enter Canada or any other foreign nation, drive a car (even people who do not own cars need licenses to drive friends' or relatives' cars), buy a beer, purchase pseudoephedrine for a stuffy nose or pick up a prescription at a pharmacy, open a bank account or cash a check at a currency exchange, buy a gun, or enter a courthouse to serve as a juror or watch the argument of this appeal. Could 9% of Wisconsin's voting population really do *none* of these things?"); Defs.' Proposed Findings of Fact ¶ 218 (testimony to the Texas Legislature warning against database matching).

c. Plaintiffs rely on a smattering of cherry-picked evidence from six years of legislative consideration, which they claim shows that the Texas Legislature knew that S.B. 14 would disparately affect minorities. *See* DOJ Br. 19-20; Private Pls.' Br. 7-8. But on review, none of this evidence supports Plaintiffs' assertion. Indeed, that this is the best Plaintiffs could gather confirms that they have failed to prove that the Texas Legislature believed that S.B. 14 would have a disparate impact.

First, Plaintiffs place heavy reliance on the post-enactment testimony of a single legislator—Representative Todd Smith—that at some point between 2005 and 2011, he had publicly estimated that 700,000 Texans lacked a driver's license. DOJ Br. 19; Private Pls.' Br. 8. There are numerous problems with this piece of evidence that sap it of any value. Most troublingly, having scoured the entire legislative history, there is no record of Representative Smith actually having said this. *See* Defs.' Proposed Conclusions of Law ¶ 51. This suggests that Representative Smith's recollection is mistaken, thus demonstrating the danger of relying on isolated statements made by legislators after the enactment of a law. *See Veasey*, 830 F.3d at 234.

Even if Representative Smith *had* made this statement in public to other legislators, however, it would still be of little value because it gives no indication of the racial makeup of the group of voters supposedly lacking driver's licenses or other S.B. 14-compliant ID. *See Lee*, 2016 WL 7210103, at *9 (affirming rejection of discriminatory-intent claim against voter ID law where "legislature did not call for, nor did it have, . . . data" regarding rates of ID possession by race in the State). Although Representative Smith years later suggested that it was "common sense" that minorities

would be more likely to be in this group than whites (Private Pls.' Br. 8), there is no indication that this view was shared, at the time the Legislature considered S.B. 14, by other proponents. *See* Defs.' Proposed Conclusions of Law ¶ 52. And indeed it turned out that Representative Smith's "common sense" was incorrect: Plaintiffs' numbers suggest that those lacking S.B. 14 ID are at least as likely (if not more) to be white rather than Hispanic or African-American. *See* Defs.' Proposed Findings of Fact ¶¶ 219-220.

Moreover, Representative Smith's statement, even if given the most plaintiff-friendly gloss, tells one nothing about *voting*. Many people without ID may not be voters in any event. As the court in *Frank* observed:

> A more plausible inference would be that people who do not plan to vote also do not go out of their way to get a photo ID that would have no other use to them. This does not imply that a need for photo ID is an obstacle to a significant number of persons who otherwise would cast ballots.

Frank, 768 F.3d at 749; *see* Defs.' Proposed Conclusions of Law ¶ 48; *see also Lee*, 2016 WL 7210103, at *7 (explaining that "leap[ing] from *the disparate inconveniences* that voters face when voting to *the denial or abridgement of the right to vote*" is "un-justified"). For this reason, even if Representative Smith had made this observation to every legislator and every legislator had believed it, and even if every legislator also believed (incorrectly) that more minorities than whites lacked drivers' licenses—and there is no evidence that any of those propositions are true—legislators could still legitimately conclude, as they did, that S.B. 14 would not have a disparate impact on minority voting.

Second, Plaintiffs cite two emails from a legislative aide which they contend "warned . . . that SB 14 would result in less opportunity for political participation by Black and Latino voters." Private Pls.' Br. 8 (citing Pls.' Proposed Findings of Fact ¶ 210, in turn citing PL205 and PL272); *see also* DOJ Br. 20. But the emails cited contain no such warning.

In the first email, which was sent only from one legislative aide to another legislative aide—and no legislators—Bryan Hebert states the unremarkable proposition that a law that allows non-photo ID places less of a burden on voters in general and therefore has less of a "chance" of burdening minorities. PL205 (ROA.38397). This is not the same, however, as suggesting that the exclusion of non-photo IDs *will* disproportionately burden minorities. In fact, the law that he was comparing was Georgia's *photo-ID-only* law, which DOJ concluded did *not* disproportionately burden minorities. *See id.* The point of the email was the prediction that DOJ would have to preclear (under the separate, now-inapplicable Section 5 retrogression standard) a voter ID law that imposed less of a burden than Georgia's. To read this email as anything more would require prohibited "guesswork." *Hunter*, 471 U.S. at 228 (quotation marks omitted).

In the second email, which was sent to only a handful of other legislative aides, Hebert opined that it was "doubtful" that the "Obama DOJ" would preclear S.B. 14 as originally written. PL272 (ROA.38985). But "context matters." *Veasey*, 830 F.3d at 237. Hebert's belief that the "Obama DOJ" was unlikely to preclear S.B. 14 was based on his belief that the Presidential Administration was "aggressively interpreting and

enforcing the Voting Rights Act," and not a belief that S.B. 14 would disparately impact minorities. Hebert 2014 Dep. 169:14-20 (ROA.63927) ("[M]y reasoning was that the Obama DOJ had been aggressively interpreting and enforcing the Vot[ing] Rights Act through preclearance and didn't seem to particularly like Texas."). And there is no evidence that Hebert shared his view with legislators (*see id.* 170:9-17), so in no event could his view have been a "warning[]" (Private Pls.' Br. 8) to legislators that S.B. 14 would have a disparate impact on minorities. Moreover, Hebert was commenting on the initial version of S.B. 14, prior to the adoption of various ameliorative provisions. *See* PL272 (email dated Jan. 22, 2011) (ROA.38985); Defs.' Proposed Findings of Fact ¶¶ 168, 195.

Third, Senator Estes's "concern[]" about whether S.B. 14 "complied with the Voting Rights Act" (PL267 (ROA.38976); *see* Private Pls.' Br. 8) does not reflect his belief that the law would disparately impact minorities. Under the preclearance regime, any legislator in a covered jurisdiction looking to change an election law needed to be concerned with Voting Rights Act preclearance. Senator Estes was simply performing his due diligence, "want[ing] to make sure" that S.B. 14 "passe[d] and [was] precleared." Hebert 2014 Dep. 110:2-5 (ROA.63912). If anything, the concern that Senator Estes had about preclearance would be evidence that he intended for S.B. 14 *not* to disparately impact minorities, as that would be required for preclearance. And his vote for S.B. 14 is evidence that he believed it would not disparately impact minorities, as there is little reason to vote for a law that one knows will be never be enforced. In any event, this "stray statement[] made by [a single] legislator[] voting

for SB 14" is "not . . . the best indicia of the Texas Legislature's" belief. *Veasey*, 830 F.3d at 234.

Fourth, and finally, Plaintiffs misrepresent the record when they assert that an "[a]nalysis provided by the Texas Secretary of State's Office to Lieutenant Governor Dewhurst during consideration of SB 14 confirmed" that the law would have a "racially discriminatory impact." DOJ Br. 20. This assertion is misleading for a number of reasons. Lieutenant Governor Dewhurst received no "[a]nalysis." *Id.* The only thing that Dewhurst was provided was an unsourced estimate from one of his staff about the percentage of registered voters who lacked a driver's license or personal ID. *See* Trial Tr. 71:5-25 (Sept. 10, 2014) (Dewhurst) (ROA.100833). And even if that number came from the Secretary of State, Plaintiffs' concede that the Secretary of State's office had not broken down ID possession rates by race or voting history. *See* Pls.' Proposed Findings of Fact ¶ 103; *cf. Lee*, 2016 WL 7210103, at *9; *Frank*, 768 F.3d at 749. Moreover, although someone in the Secretary of State's office may have communicated an estimate of the number of Texas registered voters who did not have a Texas driver license or personal ID to a member of Lieutenant Governor Dewhurst's staff, the Secretary of State's office also warned that its matching data were unreliable because the Secretary of State's office was having problems matching the list of driver's licenses to the list of registered voters. See Trial Tr. 72:13-73:2 (Sept. 10, 2014) (Dewhurst) (ROA.100834-35); *see also* Defs.' Proposed Findings of Fact ¶ 218 (the Legislature heard expert testimony that it should not rely on matching data).

Lastly, Plaintiffs concede that no legislator knew about this analysis (Pls.' Proposed Findings of Fact ¶¶ 100, 108).[6]

d. Next, Plaintiffs point to speculative warnings by *opponents* of voter ID that such laws would "burden voting for many Latino and Black Texans" because of the difficulties inherent in obtaining ID. Private Pls.' Br. 8; *see also* DOJ Br. 32. But "[i]n their zeal to defeat a bill," opponents "understandably tend to overstate its reach." *Feiger v. U.S. Attorney Gen.*, 542 F.3d 1111, 1119 (6th Cir. 2008) (citation and quotation marks omitted). Thus, "[t]he fears and doubts of the opposition are no authoritative guide." *Id.* (citation and quotation marks omitted). And it was well known that voter ID opponents were preparing for a legal challenge from the beginning (*see* Defs.' Proposed Findings of Fact ¶ 99); thus their charges of disparate impact were suspect. As another court has observed: "The incentive to couch partisan disputes in racial terms bleeds back into the legislative process," "as members of the 'out' party—believing they can win only in court, and only on a race-based claim—may be tempted to spice the legislative record with all manner of racialized arguments, to lay the foundation for an eventual court challenge." *Session*, 298 F. Supp. 2d at 473 n.69 (quotation marks omitted). Finally, the Legislature's decision not to give greater weight to speculation by opponents who had proved themselves willing to thwart

[6] The Lieutenant Governor is not an ordinary "legislator." Similar to the Vice President of the United States, the Lieutenant Governor may only vote in the case of a tie and when he participates in Committee of the Whole. *See* Dewhurst Dep. 29:2-4 (ROA.60360).

voter ID legislation by any means necessary for years does not suggest that the Legislature harbored a discriminatory purpose.

In any event, the Texas Legislature was entitled to credit contrary evidence and come to a contrary conclusion. This is particularly so in the face of (1) Democrats' concessions that they had no evidence to support their claims of disparate impact (*see* Defs.' Proposed Findings of Fact ¶ 163); (2) the Supreme Court's pronouncement in 2008 that the inconveniences faced in obtaining ID were justified by the importance of preventing voter fraud and promoting public confidence in elections (*Crawford*, 553 U.S. at 198 (concluding that "the inconvenience of making a trip to [a government office], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting")); and (3) the experiences of other States, which showed that voter ID opponents' concerns were unfounded (*see* Defs.' Proposed Findings of Fact ¶¶ 211-212).

2. Too many white voters are purportedly burdened by S.B. 14 to permit a conclusion of discriminatory intent.

Even assuming arguendo that the Texas Legislature did have the knowledge of S.B. 14's impact that Plaintiffs seek to impute to it, Plaintiffs' claims would still fail because this purported impact fell heavily on whites. According to Plaintiffs, hundreds of thousands of white registered voters—by some measures, more than similarly situated African-American and Hispanic registered voters *combined*—were also impacted by S.B. 14. *See* Defs.' Proposed Findings of Fact ¶¶ 219-220; *see also* Defs.' Resp. to Pls.' Proposed Findings of Fact ¶ 337.

Just as too many men were adversely affected by the statute challenged in *Feeney* "to permit the inference that the statute is but a pretext for preferring men over women," "[t]oo many" white voters "are affected by" S.B. 14 "to permit the inference that the statute is but a pretext for preferring" white voters "over" minority voters. 442 U.S. at 275; *see also Lower Merion Sch. Dist.*, 665 F.3d at 552 (rejecting claim of discriminatory purpose where minorities and whites were both adversely affected by the policy at issue); *Ziegler v. Ziegler*, 28 F. Supp. 2d 601, 616 (E.D. Wash. 1998) ("[I]t is recognized that most victims of gender-motivated violence are women, but some are men. The non-victim class includes too many women also 'affected' by the statute . . . to infer that the statute is a pretext for favoring women over men."); *Richardson v. Honolulu*, 802 F. Supp. 326, 343 (D. Haw. 1992) (rejecting claim of discrimination against native Hawaiians because "[t]he impact of the ordinance is shared by all lessors, many of which, if not the majority, are not Native Hawaiian"), *aff'd*, 124 F.3d 1150 (9th Cir. 1997); *cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 536 (1993) (law drafted in such a way that "the burden . . ., in practical terms, falls on" one religion "but almost no others" suggests that the religion was targeted).

3. The historical background of S.B. 14 does not suggest that the Legislature's stated purposes were pretext.

If the "historical background of the decision . . . reveals a series of official actions taken for invidious purposes," this may suggest that a non-invidious rationale offered by a decisionmaker is pretext. *Arlington Heights*, 429 U.S. at 267. As the Fifth Circuit made clear, however, only recent acts of racial discrimination by the Texas

Legislature are relevant to this Court's analysis. *Veasey*, 830 F.3d at 231-33. And there are none.

a. Plaintiffs assert that S.B. 14 was part of an ongoing history of racial discrimination in Texas (DOJ Br. 33-36; Private Pls.' Br. 16-18, Cnty. Comm'rs' Br. 3-8), but much of that history is far too old to be probative. *See, e.g.*, DOJ Br. 34 (citing 1966 and 1975 purge laws and 1973 redistricting case); Private Pls.' Br. 17 (citing laws enacted prior to 1975). Acts by long-dead legislators occurring decades ago cannot be probative of the intent of the Texas Legislature in 2011. *Veasey*, 830 F.3d at 231-33; *see Hayden*, 594 F.3d at 165 (concession that a nearly identical provision was enacted with discriminatory intent 20 years prior did not support finding of intentional discrimination by later legislature).

Meanwhile, most of the more recent history cited by Plaintiffs has nothing to do with the Texas Legislature and is therefore not "probative of the intent of legislators in the Texas Legislature." *Veasey*, 830 F.3d at 232. For instance, DOJ asserts that "Texas and jurisdictions across the State have engaged in widespread official discrimination" (DOJ Br. 35), but it cites only examples of purported discrimination by local jurisdictions and private entities in Texas—not the Texas Legislature. *See* Pls.' Proposed Findings of Fact ¶¶ 31-42; Defs.' Resp. to Pls.' Proposed Findings of Fact ¶¶ 31-42. For their part, the Private Plaintiffs rely on various consent decrees entered into by local Texas jurisdictions—not the Texas Legislature. Private Pls.' Br. 18; *see also* Cnty. Comm'rs' Br. 5 n.4, 7 n.6. None of this evidence is helpful to this Court's inquiry, because none of it reflects on the Texas Legislature.

Even when Plaintiffs focus on the proper target and timeframe, they still come up short. DOJ, for example, cites various voting-related lawsuits filed since 2000. DOJ Br. 35. But even the few lawsuits that actually target an act by the Texas Legislature are not proper evidence because "[i]t is fundamental that unproven allegations are not proof of their content." *Scantek Medical, Inc. v. Sabella*, 693 F. Supp. 2d 235, 240 n.1 (S.D.N.Y. 2008); *accord, e.g.*, *Wright v. Farouk Sys., Inc.*, 701 F.3d 907, 911 n.8 (11th Cir. 2012) (rejecting reliance on "complaints . . . from other lawsuits," "because pleadings are only allegations, and allegations are not evidence of the truth of what is alleged"). Plaintiffs also rely on various DOJ objections to election laws "since 2000." DOJ Br. 34-35; Private Pls.' Br. 17-18, Cnty. Comm'rs' Br. 6 & n.5. But even if these were any better than allegations in a complaint—and they are not—only three of the cited objections since 2000 involve laws passed by the Texas Legislature (one was to S.B. 14), and *none* so much as suggests that the Texas Legislature enacted a law with a racially discriminatory purpose. See PL1130 (ROA.56411-16, 56426-28, 56455-60).[7] These lawsuits and objection letters are not evidence of "official actions taken for invidious purposes." *Arlington Heights*, 429 U.S. at 267; *see Veasey*, 830 F.3d at 233 (decisions not based on a finding of intentional discrimination "do not lend support for a finding of 'relatively recent' discrimination").

Finally, Plaintiffs cite relatively recent court decisions that have partially invalidated certain aspects of Texas election laws. *See* DOJ Br. 34-35 (citing *LULAC v.*

[7] Indeed, even DOJ's preclearance objection to S.B. 14 was limited to its purported retrogressive effect; DOJ did not contend, as it does now, that S.B. 14 was enacted with a discriminatory purpose. *See* PL1130 (ROA. 56455-60).

Perry, 548 U.S. 399 (2006); *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Mar. 19, 2012); *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012), *vacated*, 133 S. Ct. 2885 (2013)); Private Pls.' Br. 18 (citing *OCA Greater Houston v. Texas*, 2016 WL 4597636 (W.D. Tex. Sept. 2, 2016)). None of these cases help Plaintiffs:

- As the Fifth Circuit explained, *LULAC* "do[es] not lend support for a finding of 'relatively recent' discrimination" because "the [Supreme] Court did not base its decision on a conclusion that the legislature intentionally discriminated based upon ethnicity." *Veasey*, 830 F.3d at 233.

- In *Perez*, the only question before the court was whether plaintiffs' claims of discrimination were "insubstantial." *Perez*, slip op. at 6. Although the court said that the Texas Legislature "*may* have focused on race to an impermissible degree by targeting low-turnout Latino precincts" when drawing a single Texas House district, it never found that the Texas Legislature had, in fact, acted with discriminatory intent in drawing the contested House district because that question was not before it. *Id.* (emphasis added). This inchoate finding, therefore, cannot support Plaintiffs' claim. *See Veasey*, 830 F.3d at 233 (rejecting reliance on a decision that rejected a congressional district because "the [c]ourt did not base its decision on a conclusion that the legislature intentionally discriminated based upon ethnicity").

- Defendants addressed *Texas v. United States* at length in their Proposed Conclusions of Law. *See* Defs.' Proposed Conclusions of Law ¶¶ 66-68. The opinion was vacated before Texas had a chance to challenge it, meaning that (1) "its ruling and guidance" were "erased" (*United States v. Windsor*, 133 S. Ct. 2675, 2688 (2013)), and (2) it would be wholly unfair to hold the court's conclusion against Texas where the State was denied full process. Indeed, on appeal, DOJ *agreed* that "the district court's conclusion as to discriminatory purpose" regarding the State's Senate redistricting plan "amounts to clear error." Motion to Affirm in Part at 28, *Texas v. United States*, No. 12-496 (U.S. Dec. 7, 2012), 2012 WL 6131636, at *28.

- *OCA Greater Houston* involved no allegation of discriminatory purpose. *See* 2016 WL 4597636, at *1 ("Plaintiffs argued that" the law's provisions "violate Section 208 of the Voting Rights Act") (emphasis added). Because the court could not have based "its decision on a conclusion that the legislature intentionally discriminated based upon ethnicity," the

> decision "do[es] not lend support for a finding of 'relatively recent' discrimination." *Veasey*, 830 F.3d at 233.

Plaintiffs have stretched to find anything that could possibly be cited to manufacture a charge of recent discrimination by the Texas Legislature. They have come up empty, further undermining their charge of pretext.

b. In contrast to the paucity of probative historical background evidence suggesting that the Texas Legislature harbored discriminatory motives, there is a substantial amount of evidence dispelling any such notion. Each member of the Senate, for example, voted for amendments to expand the variety of acceptable IDs, accept expired identification, and to provide an exception to the ID requirement for the indigent. *See* Defs.' Proposed Findings of Fact ¶ 168. These votes do not make sense if, as Plaintiffs charge, "the Texas Legislature" was intent on "shap[ing] SB 14 to ensure a discriminatory impact." DOJ Br. 20 (emphasis omitted; capitalization altered). These same Senators had, in 2009, voted to enact a voter ID law that allowed a wide variety of photo and non-photo ID. *See* Defs.' Proposed Findings of Fact ¶ 197. They did this notwithstanding that, by this point, Indiana's photo-voter-ID law had been upheld by the Supreme Court and Georgia's photo-voter-ID law had received DOJ preclearance. These Senators could easily have justified a bill requiring only photo ID, and yet they drafted and passed a bill in 2009 that allowed certain forms of non-photo ID. This is strong evidence that these Senators harbored no discriminatory motives.

The same is true of Texas House members. Every member of the House who voted for the final version of S.B. 14 also voted to excise from the Senate version a

provision that exempted those over 70 from the law. *See id.* ¶ 185. If, as Plaintiffs suggest, the elderly are more likely to be white and vote Republican (Pls.' Proposed Findings of Fact ¶ 410), it would make little sense for those seeking to discriminate to excise such a provision. And most of the House members who voted to enact S.B. 14 had previously voted to enact a voter ID law that allowed a wide variety of photo and non-photo ID. *See* Defs.' Proposed Findings of Fact ¶ 199. For the reasons explained above, this is strong evidence that these legislators harbored no discriminatory motives.

c. Plaintiffs take the evidence of S.B. 14 proponents' attempts to compromise in previous legislative sessions and try to turn it on its head as proof of discriminatory purpose because, they say, between 2005 and 2011 "voter ID proponents introduced increasingly harsh bills." DOJ Br. 21; Pls.' Br. 9. Plaintiffs' reasoning is never made clear, and it is not readily apparent how the evolution of these voter ID proposals suggests an invidious purpose. In any case, Plaintiffs are mistaken. First, the 2005, 2007, and 2009 bills all allowed for a combination of non-photo and photo ID, so none of them was "harsh[er]" than the other in any meaningful way. And it was obvious to all at the time—even Plaintiffs' own expert—that the reason S.B. 14 was a photo-only law was because there was increasing demand for such a law and because Democrats had taken compromise off the table. *See* Defs.' Proposed Findings of Fact ¶¶ 83-92, 150-151. When it became clear that Democrats were not interested in compromise, and after Republicans had obtained overwhelming majorities in both houses of the

Texas Legislature, Republicans chose to pursue their policy preference and the preferences of those who had voted them into office—and who could vote them out. The result was S.B. 14's photo ID requirement for many voters.

Aside from the direct evidence supporting this view of the world, there is strong circumstantial evidence as well in the form of the voting behavior of select legislators. Two Democrats who opposed more lax voter ID bills in 2005 and 2007, switched their votes and supported a stricter voter ID bill in 2011. *See id.* ¶ 88. The only plausible explanation for this switch is that support for requiring a photo ID to vote was strong and growing. Three other legislators who opposed more lax voter ID bills in 2005 and 2007 when they were Democrats later supported a photo-voter-ID law in 2011 after they had switched to the Republican Party. See *id.* ¶ 92. The only plausible explanation for this switch is that Democratic opposition to voter ID was a matter of politics, and that the support for a photo-voter-ID bill—particularly among Republican constituents—was strong, and these legislators felt it.

4. The sequence of events leading up to S.B. 14 does not suggest that the Legislature's stated purposes were pretext.

"The specific sequence of events leading up the challenged decision"—particularly substantive and procedural departures from the norm—"also may shed some light on the decisionmaker's purposes." *Arlington Heights*, 429 U.S. at 267. But S.B. 14 did not involve substantive departures: it was one part of a long effort by the Texas Legislature to modernize and secure its election system. And there was no procedural departure that suggests discriminatory purpose: voter ID was debated in the open for six years before a law was enacted by a majority vote in both houses of the Texas

Legislature, and each procedural move by voter ID proponents was solely to get the law through the democratic process to an up-or-down vote.

a. S.B. 14 was not a substantive departure from the concerns of the Texas Legislature.

S.B. 14 was "the culmination of longstanding official efforts to address" in-person voter fraud (*Spurlock v. Fox*, 716 F.3d 383, 397 (6th Cir. 2013)) and part of a much larger and even longer-standing effort to modernize and secure Texas's electoral system. "The present case therefore represents the *opposite* of a '[s]ubstantive departure[]' where 'the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.'" *Id.* (quoting *Arlington Heights*, 429 U.S. at 267); *see also Lower Merion Sch. Dist.*, 665 F.3d at 553 (explaining that the fact that "[t]he decision to redistrict was born of a capital improvement program intended to modernize every school in the district" suggested that it was not the result of discriminatory intent).

The 2000 Presidential election and *Bush v. Gore* issued a clarion call to "legislative bodies nationwide" to "examine ways to improve the mechanisms and machinery for voting." *Bush*, 531 U.S. at 104; *see also* Defs.' Proposed Findings of Fact ¶¶ 52-92. Texas answered that call with a decade-long effort to modernize and secure its election system. *See id.* ¶¶ 104-111, 127, 137, 149, 187-188. In doing so, Texas demonstrated that "the factors usually considered important by the" Texas Legislature (*Arlington Heights*, 429 U.S. at 267) were those identified by the Supreme Court in *Crawford*: the need to ensure "orderly administration" of elections, to "prevent[] voter fraud," and to "inspire public confidence" in "the electoral system." 553 U.S. at 196-

97 (internal quotation marks omitted). S.B. 14 was consistent with each of these factors. *See supra*, pp. 9-15; *infra*, pp. 44-48.

Plaintiffs contend that S.B. 14 was a "substantive departure" because it was not identical to the Indiana and Georgia laws on which proponents claimed to have modeled it. DOJ Br. 21-22. Plaintiffs are mistaken. No two voter ID bills are identical, not even Georgia's and Indiana's. *See* Defs.' Proposed Findings of Fact ¶¶ 71-73, 76. Nothing in the way S.B. 14 differs from Georgia's or Indiana's law suggests an invidious, substantive departure from the policy factors important to the Texas Legislature.

Plaintiffs first point to the relatively limited variety of IDs allowed by S.B. 14. DOJ Br. 21-22; Private Pls.' Br. 13-14. But this choice comports with the Texas Legislature's interest in the "orderly administration" of elections. *Crawford*, 553 U.S. at 196. These IDs were chosen because they were the most "readily available" and "easiest" to acquire and use. Defs.' Response to Pls.' Findings of Fact ¶¶ 208, 306-307. And the universe of IDs was limited to avoid confusion at the polls; *i.e.*, to ensure orderly administration. *See* Defs.' Proposed Findings of Fact ¶ 173; *see also* Defs.' Response to Pls.' Proposed Findings of Fact ¶¶ 246, 248 (rebutting the implication that minority rates of possession of various IDs was known to the Texas Legislature).

Plaintiffs also point to S.B. 14's lack of an indigency exception, which differs from Indiana's law. DOJ Br. 22; Private Pls.' Brief 14 n.5. This is disingenuous, at best. In an attempt to ameliorate S.B. 14's possible effects on poorer voters and com-

promise with Democrats, Republicans in the Texas Senate added an Indiana-like indigency exception to S.B. 14. *See* Defs.' Proposed Findings of Fact ¶ 168. After it passed in the Senate, S.B. 14 was reported out of committee in the House with this exception intact. *See id.* ¶¶ 179, 184. It was not until House Democrats argued that the indigency-affidavit compromise was hypocritical—*i.e.*, that it was a substantive departure from the "factors usually considered important by" voter ID proponents (*Arlington Heights*, 429 U.S. at 267)—that an amendment was offered to eliminate the exception. *See* Defs.' Proposed Findings of Fact ¶ 184. The amendment eliminating the indigency exception was supported by Democrats who opposed S.B. 14. *See id*. Thus, contrary to Plaintiffs' assertion, the exception was not "stripped from SB 14 in conference, without . . . debate or explanation." DOJ Br. 29-30. Rather, S.B. 14's conferees were faced with the prospect of no provision to ameliorate possible effects on the poor on the one hand, and bipartisan opposition to the indigency exception on the other. The result of this "give-and-take inherent in the legislative process" (*Session*, 298 F. Supp. 2d at 471) was the provision of free voter ID cards (Defs.' Proposed Findings of Fact ¶ 195), *just as Georgia law provides* (*see* Private Pls.' Br. 14 n.5). Thus, the legislators replaced an Indiana-inspired provision with a Georgia-inspired provision. Nothing in this sequence suggests an invidious, substantive departure.

b. The procedures used to get S.B. 14 to debate and an up-or-down vote do not suggest a discriminatory purpose.

"The procedure used to arrive at" S.B. 14—*i.e.*, the democratic process with open debate followed by passage by majority vote—"was well-defined, well-regulated,

and transparent." *Spurlock*, 716 F.3d at 398; *see Lee*, 2016 WL 7210103, at *9 (procedure did not suggest invidious intent where there was "full and open debate" "and no evidence was presented of untoward external pressures or influences affecting the debate"); Defs.' Proposed Conclusions of Law ¶¶ 97-106. For a total of six years, the issue of voter ID was exhaustively debated in legislative proceedings "open to the public." *Spurlock*, 716 F.3d at 397.[8] The more than 4,500 pages of open debate over six years confirm that there was nothing "abnormal or pernicious about" the way the Texas Legislature finally enacted a voter ID law. *Id.*; *see also Husted*, 837 F.3d at 636 (no evidence of discriminatory purpose where legislature "considered [election law's] provisions" in the open "for several months before their passage"); *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 229 (4th Cir. 2016) (procedural departures are suggestive of discriminatory purpose if they show an "eagerness" to rush legislation through with limited opportunity for debate and review).

[8] Complaining of the use of a select committee—vice-chaired by a vocal opponent of voter ID (*see* Defs.' Proposed Findings of Fact ¶ 177)—to consider S.B. 14 in the House, Plaintiffs cite the Ninth Circuit's decision in *Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1164 (9th Cir. 2013), and suggest that it held that use of such committees suggests discriminatory purpose. DOJ Br. 29. Plaintiffs misread *Pacific Shores*. The Ninth Circuit was not concerned with the "ad hoc" nature of the committee in that case, it was concerned that the committee "*met privately and off the record*." 730 F.3d at 1164 (emphasis added); *see id.* at 1164 n.27; *see also Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 471 (W.D. Tex. 2001) (cited at DOJ Br. 29) (only procedural departure noted by the court was consideration in a *closed* meeting). The consideration of S.B. 14 by the select committee, like every other part of S.B. 14's consideration, was done in the open. The reasoning of *Pacific Shores* further undermines Plaintiffs' case for discrimination.

a. Plaintiffs do not and cannot seriously contend that voter ID did not receive open and careful consideration between 2005 and 2011, or even in 2011 alone—S.B. 14 was introduced at the very beginning of the session and was not enacted until the very end. *See* Defs.' Proposed Findings of Fact ¶¶ 153, 196, 198; *Husted*, 837 F.3d at 636-37. Instead, Plaintiffs are left to complain about the measures taken by voter ID proponents simply to get S.B. 14 to debate and an up-or-down vote. DOJ Br. 29-30; Private Pls.' Br. 19-20.[9] "These complaints," however, which amount to nothing more than complaining that a minority of legislators was not able to block the will of the majority, "rather than constituting evidence of a discriminatory motive, indicate a general dissatisfaction with the legislative process." *Moore v. Detroit Sch. Reform Bd.*, 293 F.3d 352, 369 (6th Cir. 2002); *see also id.* at 369-70 (explaining that "Legislature's (1) speedy passage of" law, "(2) disrespectful treatment of" certain legislators, "(3) failure to gather and analyze relevant information before voting on the" law, "(4) refusal to hold" certain hearings, "(5) rejection of" purportedly ameliorative "amendments . . ., (6) selection of reform measures that allegedly fail to address the real problems" raised by the legislature, "and (7) reliance on a scandal that occurred many

[9] Plaintiffs' contention that these procedures "short-circuit[ed] debate" (Private Pls. Br. 19) gets it backwards. S.B. 14 *opponents* misused the two-thirds rule and the House calendar ("chubbing") to prevent debate on voter ID bills for years over three previous legislative sessions. *See* Defs.' Response to Pls.' Proposed Findings of Fact ¶ 87; *see also* Davidson Corrected Rpt. ¶ 20 (ROA.102473) (noting that Senate Democrats sent a letter to Lieutenant Governor Dewhurst informing him "that they would vote against any procedural motion to" even "*debate* voter ID legislation") (emphasis added). All that the proponents' procedural moves allowed for was open debate and an up-or-down vote.

years before to justify its actions" might justify "a legitimate and even a valid critique of its behavior, but it does not lead to an inference of racial discrimination").

Plaintiffs misinterpret the *Arlington Heights* factors as elements of their claim, treating them as boxes to be checked rather than evidence to be examined. This leads Plaintiffs to draw inferences of discrimination from neutral facts without a complete analysis. For example, Plaintiffs treat departures from the normal procedural sequence as though they necessarily signal racial discrimination. But *Arlington Heights* did not establish that procedural departures are inherently race-based or discriminatory—legislatures may depart from standard procedure for any number of reasons. As Defendants have already demonstrated, each one of the purported procedural "departures" relied on by Plaintiffs was not only well grounded in precedent, it was in direct response to the unprecedented obstruction by voter ID opponents. *See* Defs.' Proposed Conclusions of Law ¶¶ 98-100. "[C]ontext matters." *Veasey*, 830 F.3d at 237. This context not only rebuts Plaintiffs' suggestion that there was anything invidious about the procedures used to get S.B. 14 to debate and an up-or-down vote, it also requires caution on the part of this Court.

The Court would set a dangerous precedent if it allowed legislative opponents to bootstrap a claim of discrimination by using obstruction to force proponents into procedural maneuvers—requiring a legislative majority to either acquiesce to an intransigent minority or face defeat in court. It is the desire of the Judiciary to avoid creating such pernicious incentives that makes it most wary of "inject[ing] the federal courts into a political game for which they are ill-suited, and indeed in which they are

charged not to participate under the most basic principles of federalism and separation of power." *Session*, 298 F. Supp. 2d at 473. "[F]ederal judges are not legislative players"; they "are only the guardians of the boundaries." *Id.*

b. Plaintiffs also object to aspects of S.B. 14's consideration that were not procedural departures at all. Plaintiffs claim, for example, that the failure of the Secretary of State's office to timely share a flawed matching analysis with the Legislature is a procedural departure. DOJ Br. 30-31. To make this claim is to defeat it. The Secretary of State is not the Legislature, and the Legislature had nothing to do with the Secretary of State's decision.

Plaintiffs further complain that "the Senate and House refused to engage in substantive debate, and active consideration of amendments was largely limited to those that did not ameliorate the discriminatory impact of SB 14." DOJ Br. 29. These are also facially not procedural issues but rather reflect "a general dissatisfaction with the legislative process." *Moore*, 293 F.3d at 369. Plaintiffs' accusation is unsupported in any event. Consideration of S.B. 14 in the House and Senate spans well over *1,500* transcript pages. *See* DEF0001 (Legislative history of S.B. 14). And proponents, in fact, explained the rejection of each proposal voted down. *See* Defs.' Proposed Findings of Fact ¶¶ 169-173. While it is true that proponents did not give in-depth answers to all of opponents' questions (*see* DOJ Br. 23; Defs.' Response to Pls.' Proposed Findings of Fact ¶ 232), this is not evidence of discriminatory purpose. *See Moore*, 293 F.3d at 369-70. The legislative record was replete with information that could have answered opponents' questions.

There is no evidence that proponents were hiding anything from opponents. To the contrary, after six years of consideration, the issue had been thoroughly considered and deserved an up-or-down vote.

Finally, Plaintiffs point out that S.B. 14 contained a fiscal note despite the State's budget shortfall. Private Pls.' Br. 19. But once again, Plaintiffs are off base. There was no procedural rule that barred fiscal notes. And Plaintiffs have again ignored the record. The $2 million that S.B. 14 directed the Secretary of State to spend on voter education was already in the possession of the agency; no state expenditure was necessary, so the budget shortfall did not come into play. *See* Defs.' Response to Pls.' Proposed Findings of Fact ¶¶ 91, 95. This was explained during S.B. 14's debate both by Senator Fraser, the bill's sponsor, and by the Secretary of State. *See id.*

5. Plaintiffs' remaining circumstantial evidence is insufficient to meet their demanding burden.

As shown, none of the *Arlington Heights* factors support a finding that S.B. 14 was enacted for a discriminatory purpose. Plaintiffs' remaining circumstantial evidence cannot prove their discriminatory-purpose claims.

a. Plaintiffs' theory of motive is not supported by the evidence.

Looking for a motive to explain why the Texas Legislature would purportedly seek to burden minority voters, Plaintiffs conjure up a theory that Texas Republicans, fearful of a rise in the population of Democratic-voting minorities, enacted S.B. 14 as means of keeping these minorities from the polls in order to protect Republican power. DOJ Br. 31-33; Private Pls.' Br. 5-7. The only evidence Plaintiffs cite in support of their fanciful conjecture is (1) Texas's purportedly racially polarized voting,

and (2) the timing of the Texas Legislature's concern with voter ID. *See id.* On closer inspection, however, this evidence does not exist.

Plaintiffs assert that Texas experiences racially polarized voting and that this phenomenon gave Republicans reasons to fear a growing minority population. DOJ Br. 9-10, 31-32, Private Pls.' Br. 5-6. Racially polarized voting means that voting patterns are motivated by race and not by partisan preference. *See, e.g., LULAC v. Clements*, 999 F.2d 831, 852-61 (5th Cir. 1993) (en banc). But although Texas has acknowledged that in partisan general elections, a majority of non-Hispanic white voters tend to favor Republican candidates, a majority of Hispanic voters tend to favor Democratic candidates, and a majority of African-American voters tend to support Democratic candidates (*see* Pls.' Proposed Findings of Fact ¶ 11), that does not prove that *racially* polarized voting exists in the State. The tendency of general-election voters to favor candidates of a particular party persists regardless of the race of the candidates. In other words, it is a *partisan* preference, not a *racial* preference. Plaintiffs have introduced no evidence, and the State has certainly not conceded in any pending case, that voting patterns are motivated by race as opposed to partisan preference. There is no evidence, for instance, that non-Hispanic white Republican voters will not support Hispanic or African-American Republican candidates. Accordingly, the Court has no basis to find that racially polarized voting exists. *Clements*, 999 F.2d at 852-61.

Plaintiffs' second piece of supposed evidence is no more extant than their first. Plaintiffs claim that "[i]n 2004, Texas became a majority-minority state" and

"[w]ithin months, the first photo voter ID bill, HB 1706, was introduced in the Texas Legislature." Private Pls.' Br. 5; *see also* DOJ Br. 3. But in fact, the first Texas voter-ID bill was introduced by a Democratic legislator in 2001. *See* Defs.' Proposed Findings of Fact ¶¶ 100-102. And while Texas became a majority-minority state in 2004, this fact was not known to the public—the Texas Legislature included—until August 2005. *See* Defs.' Proposed Conclusions of Law ¶ 89. That was after H.B. 1706 was introduced, after it was passed by House, and after it was blocked in the Senate. *See id.* Indeed, it was after the 2005 legislative session had entirely concluded. When the facts are laid out accurately, the timing of H.B. 1706 is actually evidence that voter ID proponents *could not* have been motivated by Texas's demographic shift.

In addition to relying on nonexistent evidence, Plaintiffs wholly ignore the evidence that actually shows why Texas took up voter ID in 2005 in the course of its election-modernization effort: the issue of voter ID was percolating in States around the country and in voters' minds. While 11 States required voter ID in 2001, that number grew to 24 in 2005. Defs.' Proposed Findings of Fact ¶ 113. And in 2005, bills to introduce or strengthen voter ID requirements were under consideration in 11 other States in addition to Texas. *Id.* Meanwhile, in 2005, a poll of Americans showed that a clear majority of the country—57 percent—favored voter ID laws. *Id.* ¶ 81. Texas's push for a voter ID law "is more likely the product of legitimate motives than invidious discrimination, as demonstrated by its adoption in" numerous other States "and its widespread support" among the public. *Hayden*, 594 F.3d at 167 (internal quotation marks omitted).

Plaintiffs' theory of motive is nothing more than "guesswork," which this Court must "eschew." *Hunter*, 471 U.S. at 228 (quotation marks omitted).

b. S.B. 14's provisions and amendments do not evidence discriminatory purpose.

Plaintiffs next turn to a series of complaints over various substantive decisions that were made during "the give-and-take inherent in the legislative process" (*Session*, 298 F. Supp. 2d at 471). *See* DOJ Br. 14-15, 20-24; Private Pls.' Br. 9-11. In familiar fashion, on closer inspection, none of Plaintiffs' complaints actually suggest any discriminatory motive.

i. Plaintiffs first point to the various funding decisions by the Texas Legislature (DOJ Br. 14-15; Private Pls.' Br. 10-11), but each has a legitimate explanation. Plaintiffs complain, for instance, that, although the Legislature directed the Secretary of State to spend $2 million on voter education efforts, it did not *require* that funding to be targeted at educating poor and minority voters or educating voters about the availability of the free EIC voter IDs. *See* DOJ Br. 14-15. Plaintiffs ignore, however, that neither did the Texas Legislature *prohibit* such spending. The entire administrative state in this country is built on the assumption that experts in an agency will often know "how best to marshal . . . limited resources . . . to carry out . . . delegated responsibilities." *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007). It is, therefore, the traditional practice in Texas to leave issues of implementation to the agencies. *See* Defs.' Proposed Findings of Fact ¶¶ 169-171. The fact that the Texas

Legislature did what most legislatures typically do is not evidence of invidious purpose. *See Arlington Heights*, 429 U.S. at 267 (courts should consider whether "factors usually considered important by the decisionmaker" support the decision made).

Plaintiffs also complain that funding was insufficient. DOJ Br. 14. But whatever hindsight may show, the record before the Texas Legislature suggested that the funding was adequate. *See* Defs.' Response to Pls.' Proposed Findings of Fact ¶¶ 258-259. A witness from the Secretary of State's office testified in the Senate and explained that the agency engages in voter outreach and election-worker training every election cycle, and each cycle it spends, on average, $3 million doing so. See DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 437:1-6, 440:5-18 (Jan. 25, 2011) (ROA.69042)). The witness further testified that training and outreach related to S.B. 14 would be folded into that regular effort. *See id.* 438:23-439:8, 441:10-24 (ROA.69042-43). As a result, because there was going to be training and education anyway, the Secretary of State's office indicated that it was likely that the agency would not even "need 2 million just for the voter ID" education. *Id.* 441:15-18. (ROA.69043). Further, the Secretary of State's office informed the Legislature that beyond the $2 million that S.B. 14 directed it to spend on voter education, there was an additional $3 to $5 million in federal funds that Texas had with which to educate voters and train election workers. *See id.* 439:16-44:10 (ROA.69042). Nothing in the record suggests that the Texas Legislature knew or intended funding to be inadequate. Thus, there is no evidence that the Texas Legislature made its funding decisions with the purpose of hurting minorities.

ii. Plaintiffs also complain about the alleged ineffectiveness of the free EIC voter ID provision and the purported difficulty in obtaining an EIC. *See* DOJ Br. 14-17. Plaintiffs' complaints about the EIC provision, however, are misplaced for the obvious reason that the provision can only be explained as an attempt to ameliorate any potential burden that S.B. 14's ID requirement would place on poorer voters. *See* Defs.' Proposed Findings of Fact ¶ 195. As already explained, after House Democrats had led a push to eliminate S.B. 14's indigency exception, the conferees were left with few options. *See supra*, pp. 35-36. They chose to resolve the difference between the House and Senate version by inserting a Georgia-like provision for a free ID, and left the implementation of that provision up to the Texas Department of Public Safety, with its expertise in issuing IDs, and other agencies. *See* Defs.' Response to Pls.' Proposed Findings of Fact ¶¶ 138, 239-240, 242, 244. Whatever problems may have crept up during this implementation, there is absolutely no evidence that the Texas Legislature foresaw them, let alone intended them. Any suggestion that this *ameliorative* provision was intended to *hurt* minorities is less than "guesswork" (*Hunter*, 471 U.S. at 228 (quotation marks omitted))—it is untenable.

iii. Plaintiffs next complain about the adoption of certain amendments and the rejections of others. Each of these actions, however, have legitimate explanations and are not evidence of discriminatory purpose.[10]

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[10] Plaintiffs make much of the fact that certain voter ID proponents were unable to explain certain decisions to the satisfaction of plaintiffs years later. *See* DOJ Br. 23; Private Pls.' Br. 10. But the "contemporary statements by members of the decisionmaking body," which are "highly relevant" to the question of discriminatory purpose (*Arlington Heights*, 429 U.S. at 268), *do* explain these decisions.

Plaintiffs observe that the Senate added handgun licenses, which are supposedly more widely held by whites, to the list of acceptable ID, but rejected other IDs—student IDs, employee IDs, etc.—which are supposedly more likely to be held by minorities. *See* DOJ Br. 22-23; Private Pls.' Br. 10. Plaintiffs, however, ignore several salient facts. First, the handgun license amendment was offered by a Democrat (who ultimately opposed S.B. 14) and adopted unanimously. *See* Defs.' Proposed Findings of Fact ¶ 168. Compromise with voter ID opponents is not evidence of invidious purpose. Second, there is no evidence that the Legislature was aware of the racial breakdown of ID possession. *See* Defs.' Response to Pls.' Proposed Findings of Fact ¶¶ 247-248; Defs.' Proposed Conclusions of Law ¶ 132. And third, the other IDs were rejected in an effort to ensure the orderly administration of elections and avoid confusion. *See* Defs.' Proposed Findings of Fact ¶ 173; *see also* Defs.' Response to Pls.' Proposed Findings of Fact ¶ 247 (Plaintiffs have no evidence that a Texas handgun license is not nearly identical to a Texas driver's license, thus presenting no risk of confusion to poll workers); *see supra*, p. 35.

Plaintiffs also note that the Texas Legislature rejected various amendments that sought to micromanage the implementation of the voter ID law. *See* DOJ Br. 22; Private Pls.' Br. 10. But at the time, and later, legislators explained that it was their preference to leave issues of implementation up to the expert agencies. *See* Defs.' Proposed Findings of Fact ¶¶ 169-171; Defs.' Response to Pls.' Proposed Findings of Fact ¶¶ 239-240, 242, 244. In turn, those agencies did just what voter ID opponents were asking for. *See* Defs.' Proposed Findings of Fact ¶¶ 24-33. The Texas Legislature's

decision to leave implementation to agencies—something that happens in legislatures across the country every day—is not evidence of invidious purpose. *See Arlington Heights*, 429 U.S. at 267 (courts should consider whether "factors usually considered important by the decisionmaker" support decision made).

Finally, Plaintiffs complain that voter ID's proponents rejected costly and dilatory amendments that would have required an impact study before S.B. 14 could be enacted and similar studies to be performed annually. DOJ Br. 22. The obvious explanation for the rejection of the pre-enforcement-impact-study amendment is that studies had not shown a voter ID law to have any negative impact on voting. *See supra*, p. 18. Even Democratic legislators admitted that there was no evidence that S.B. 14 would have a negative impact on minorities. *See* Defs.' Proposed Findings of Fact ¶ 163. The Texas Legislature had already concluded that S.B. 14 would not negatively affect minorities (*see supra*, pp. 17-18); accordingly, no pre-enforcement impact study was necessary. And the other impact studies were rejected for the legitimate reason that the Legislature was wary of adding additional mandates to the Secretary of State's efforts. If problems arose from the enforcement of the law, they could be brought to the attention of the Legislature, and the Legislature could investigate those problems itself and decide what action to take. *See* Defs.' Proposed Findings of Fact ¶ 172. One can disagree with this policy assessment, but there is nothing inherently invidious about it. The rejection of these amendments cannot be evidence of discriminatory purpose without prohibited "guesswork" concerning the veracity of

legislators' facially legitimate rationales. *Hunter*, 471 U.S. at 228 (quotation marks omitted).

c. The Legislature's reaction to disputed court decisions does not evidence discriminatory purpose.

The final piece of evidence on which Plaintiffs rely is the absence of a response from the Texas Legislature to the now-vacated findings of the court in *Texas v. Holder* that Texas had failed to prove that S.B. 14 will not have a retrogressive effect. 888 F. Supp. 2d 113, *vacated*, 133 S. Ct. 2886; *see* DOJ Br. 23 n.19; Private Pls.' Br. 21. This is not evidence of invidious purpose, but rather evidence that the Texas Legislature disagreed with the conclusion of the court—a conclusion that was subsequently vacated by the Supreme Court. In that case, Texas disputed that S.B. 14 has a retrogressive effect (*see* Appellant's Jurisdictional Statement, *Texas v. Holder*, No. 12-1028 (U.S. Feb. 19, 2013)), and it continues to contend that S.B. 14 does not have a disparate impact on minorities (*see* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016)). Moreover, the Texas Legislature, relying on academic studies and the experiences of other States, concluded that S.B. 14 would *not* disparately affect minorities. *See* Defs.' Proposed Findings of Fact ¶¶ 207-216. Nonetheless, the Texas Legislature remained open to adjusting the law if future elections demonstrated such a need. *See id.* ¶ 172. But the elections that followed implementation of S.B. 14 only confirmed that it would not negatively impact Texas voters, including minorities. *See id.* ¶¶ 45-51. Accordingly, the Texas Legislature had no need to adjust the law.

III. THE TEXAS LEGISLATURE WAS GOING TO ENACT S.B. 14 REGARDLESS OF ANY PURPORTED SECRET PURPOSE.

Defendants explained in their Proposed Conclusions of Law that the nationwide push for voter ID, combined with the overwhelming support for such a law and the threat of a constituent backlash if a photo-only voter ID law with minimal loopholes were not enacted, made it inevitable that the Texas Legislature was going to enact S.B. 14. Defs.' Proposed Conclusions of Law ¶¶ 146-150. Nothing that Plaintiffs argue undermines this conclusion.

Plaintiffs' sole argument in response is that because S.B. 14, in their view, would not be effective in preventing ineligible voters from voting or promoting public confidence, it would not have been enacted absent a discriminatory purpose. DOJ Br. 36; Private Pls.' Br. 21-22. But even accepting arguendo Plaintiffs' view of the world, this does not support their conclusion because they ignore that Georgia and Indiana also enacted photo-only voter ID bills. There is no suggestion—let alone proof—that those laws were enacted with a discriminatory purpose. If such a law is not effective in preventing ineligible voters from voting or promoting public confidence in Texas, it would not be effective in Indiana or Georgia, either, and yet the laws in those States were still enacted. So, even in Plaintiffs' version of reality, there must be additional reasons why a State would enact such a law. Defendants have explained what those reasons are: public demand and the nationwide momentum behind such laws. These reasons would have inevitably led to the enactment of S.B. 14.

Moreover, the primary difference between the Indiana and Texas laws that Plaintiffs point to is the lack of an indigency exception in S.B. 14. *See* DOJ Br. 22;

Private Pls.' Br. 14 n.5. But in the Texas Legislature, the excision of the indigency exception was driven by voter ID *opponents* (*see supra*, pp. 35-36), which suggests that any voter ID law to come out of the Texas Legislature would inevitably not include that exception, but would instead apply the Georgia approach of providing free voter IDs. This is further support for the conclusion that S.B. 14—a photo-only voter ID law with minimal loopholes that created free voter ID—was inevitably going to be enacted, regardless of any secret purpose.

CONCLUSION

Plaintiffs have failed to carry their heavy burden of proving that the Texas Legislature enacted S.B. 14 with a racially discriminatory purpose.

Date: December 16, 2016

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant
Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Chief, General Litigation Division

MATTHEW H. FREDERICK
Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-6407
Fax: (512) 474-2697

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

Exhibit 11

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANTS' RESPONSE TO PLAINTIFFS' JOINT PROPOSED FINDINGS OF FACTS (REDACTED)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

1. Defendants do not dispute this fact.

2. Defendants do not dispute this fact.

3. Defendants do not dispute this fact. The Fifth Circuit did not, however, remand merely "to reweigh the discriminatory purpose evidence" in this case "in the first instance." It is also instructed this Court that critical elements of Plaintiffs' case may not be considered as evidence of the Texas Legislature's purpose in enacting S.B. 14. In trying to prove discriminatory purpose, Plaintiffs are not permitted to rely on (1) historical instances of discrimination by long-dead legislators, (2) discriminatory acts or statements by persons outside the Legislature, (3) legislative support for unrelated bills that have not been found to be discriminatory, (4) speculation by S.B. 14 opponents that the bill's proponents acted for a discriminatory purpose, and (5) isolated and ambiguous statements made by legislative proponents after enactment. *Veasey v. Abbott*, 830 F.3d 216, 229-34 & n.16 (5th Cir. 2016) (en banc).

4. Plaintiffs' proposed conclusion is wrong for the reasons set forth in Defendants' Proposed Conclusions of Law. Plaintiffs have not identified any proponent of SB 14 whom they allege supported or voted for SB 14 because he or she believed it would have a detrimental effect on Hispanic or African-American voters, and the record contains no evidence to support a finding that *every* proponent of SB 14 supported or voted for SB 14 as a deliberate attempt to deny or abridge the rights of Hispanic or African-American voters. Plaintiffs' proposed finding that "proponents of SB 14" acted for a racially discriminatory purpose requires the Court to engage in speculation.

5. Plaintiffs' proposed conclusion is wrong for the reasons set forth for Defendants' Proposed Conclusion of Law.

6. Defendants do not dispute that the minority population in Texas is growing. More relevant, however, the Texas Legislature considered the issue of voter ID at a time when then there was a national movement to ensure the integrity of elections and to promote public confidence in the electoral system. *See* Defendants' Proposed Findings of Fact ¶¶ 52-92. The voter ID bills considered by the Texas Legislature between and 2005 and 2011 were among the "nearly 1,000" voter ID "bills introduced in a total of 46 states" between 2001 and 2011. DEF0053 (National Conference of State Legislatures, *Voter Identification Requirements* (April 7, 2012)) at 5 (ROA.78671). At the same time, as Plaintiffs point out, the demographics of Texas were changing.

7. Defendants do not dispute that the minority population in Texas grew substantially between 2000 and 2010. Plaintiffs, however, have failed to produce any evidence that any Republican legislator was the least bit concerned with the demographic changes occurring in Texas. In fact, while these demographic changes were occurring, Republicans in Texas were achieving historic political gains. *See* Defendants' Proposed Findings of Fact ¶ 150.

8. Defendants do not dispute that the minority population in Texas grew substantially between 2000 and 2010.

9. Although Texas became a majority-minority state in 2004, that fact was not known until August 2005, after the close of the 79th Legislature, which considered the Republicans' first voter ID bill, H.B. 1706. *See* Defendants' Proposed Conclusions of Law ¶ 89. This timing rebuts Plaintiffs' suggestion that the State's changing demographics motivated the Legislature to enact a voter ID law.

10. Plaintiffs' proposed finding has no basis in the record. That other courts have found racial polarization in other cases based on specific claims and elections does

not support a finding that voting is racially polarized in any part of the State, let alone that voting is racially polarized as a matter of law in every part of the State and in every election. Plaintiffs cannot meet their burden of proof in this case by citing opinions rendered in other cases.

11. Texas has not conceded, in this or other pending litigation, that racially polarized voting exists in any part of the State. Texas has acknowledged that in partisan general elections, a majority of non-Hispanic white voters tend to favor Republican candidates, a majority of Hispanic voters tend to favor Democratic candidates, and a majority of African-American voters tend to support Democratic candidates. That does not prove that racially polarized voting exists in the State. The tendency of general-election voters to favor candidates of a particular party persists regardless of the race of the candidates. Plaintiffs have introduced no evidence, and the State has certainly not conceded in any pending case, that voting patterns are motivated by race as opposed to partisan preference. There is no evidence, for instance, that non-Hispanic white Republican voters will not support Hispanic or African-American Republican candidates. Without evidence that voting patterns are motivated by race and not by partisan preference, the Court has no basis to find that racially polarized voting exists. *See, e.g., LULAC v. Clements*, 999 F.2d 831, 852-61 (5th Cir. 1993) (en banc). Plaintiffs' proposed finding has no evidentiary support.

12. Plaintiffs' proposed finding is not supported by the cited documents. The cited statistical analyses of voting patterns in Texas elections were conducted for the purpose of litigation to assist in identifying voting patterns in past elections and determining whether and to what extent racially polarized voting may have occurred in specific elections held in specific districts. That the documents are titled "Racially Polarized Voting Analysis" does not amount to a concession that racially polarized voting exists as a matter of fact or law.

13. The cited statistics do not support a finding of racially polarized voting because they indicate that voting patterns are motivated by partisan preference, not racial considerations. *See Clements*, 999 F.2d at 852-61. Defendants do not dispute that more Anglo voters have supported Republican candidates for President and Governor. Anglo support for Republicans, however, confirms that the Texas Legislature could not have enacted S.B. 14 with a discriminatory purpose, because Plaintiffs' experts' analyses included a finding that more Anglo voters lack S.B. 14 ID than African-American and Hispanic voters *combined* (*see* Defendants' Proposed Findings of Fact ¶¶ 218-220). *See Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 275 (1979); Defendants' Proposed Conclusions of Law ¶ 47.

14. This proposed finding is not supported by the cited quotations. Neither Ken Emanuelson nor Kenny Marchant were members of the Texas Legislature in 2011. The unsworn hearsay statements attributed to them do not support any statement about the views of "Republican Party leaders and activists." These statements were made by persons outside the Texas Legislature and, therefore, are not relevant to this Court's analysis. *See supra*, ¶ 3.

15. Defendants do not dispute that while demographic changes Plaintiffs point to were occurring, Republicans in Texas were achieving historic political gains. *See* Defendants' Proposed Findings of Fact ¶ 150.

16. Plaintiffs' recitation of the facts is misleading. Plaintiffs provide no evidence that proponents of voter ID supported the legislation for race-based reasons. Even opponents of voter-ID legislation rejected that proposition. *See id.* ¶¶ 162-163. Support for voter ID in the Texas Legislature was divided along political—not racial—lines. Republicans in the Senate uniformly supported S.B. 14; Democrats uniformly opposed it. S.J. of Tex., 82d Leg., R.S. 2084 (May 9, 2011) (ROA.71816). S.B. 14 was

supported by all Republican Members of the Texas House, including Hispanic and African-American Republicans. *Id.* (reporting that Representatives Aaron Peña, Jose Aliseda, John Garza, Dee Margo, James White, and Stefani Carter voted for S.B. 14); *see also* Trial Tr. 291: 20-293:6 (Sept. 2, 2014) (Golando) (ROA.98923-25) ("Q: Did any members of [the Mexican American Legislative Caucus] vote for S.B. 14? A: Yes."). Democrats overwhelmingly opposed the bill, although two Democratic House Members voted for the bill—Representatives Craig Eiland and Joe Pickett. Confirming that support for S.B. 14 was divided along political and not racial lines, three Republicans who voted in favor of S.B. 14, including one Hispanic representative, only began to support voter ID after they switched parties. *See* Defendants' Proposed Findings of Fact ¶ 92.

17. Plaintiffs' recitation of the facts is misleading. Plaintiffs ignore that it was not just the Texas Legislature that recognized that requiring voters to identify themselves can prevent fraud. This was also recognized by numerous other States, the federal government, two bipartisan commissions, and large majorities of the public. *See* Defendants' Proposed Findings of Fact ¶¶ 54-85. In any event, acts by long-dead legislators are not relevant to this Court's analysis. *See supra*, ¶ 3.

18. Plaintiffs' recitation of the facts is misleading. As the Fifth Circuit instructed, only recent judicial findings of racial discrimination are relevant to this Court's analysis. *Veasey*, 830 F.3d at 231-33. That leaves Plaintiffs with one purportedly helpful data point: in *Texas v. United States*, 887 F. Supp. 2d 133, 159-66 (D.D.C. 2012), *vacated and remanded on other grounds*, 133 S. Ct. 2885 (2013), a vacated opinion from a three-judge district court purported to find that the 2011 Texas Legislature created two redistricting plans with a discriminatory purpose. But that case cannot possibly

support a discriminatory-purpose finding here for the reasons discussed in Defendants' Proposed Conclusions of Law. *See* Defendants' Proposed Conclusions of Law ¶¶ 66-68.

19. Plaintiffs' recitation of the facts is misleading. The Fifth Circuit has already rejected reliance on the redistricting plan enacted by the Texas Legislature in 2003, which was *not* found to be intentionally discriminatory. *Veasey*, 830 F.3d at 232-33. In addition, the opinion of the three-judge court in *Texas v. United States*, 887 F. Supp. 2d 133, cannot possibly support a discriminatory-purpose finding here for the reasons discussed in Defendants' Proposed Conclusions of Law. *See* Defendants' Proposed Conclusions of Law ¶¶ 66-68. Finally, a redistricting plan enacted by the Texas Legislature 40 years before it enacted S.B. 14 is not relevant to this Court's analysis. *See supra*, ¶ 3.

20. Defendants do not dispute that in 1975, the Texas Legislature enacted Senate Bill 300, which included a requirement that all voters reregister. *See Flowers v. Wiley*, 675 F.2d 704, 705 (5th Cir. 1982). Nor do Defendants dispute that the Department of Justice ("DOJ") objected and denied preclearance of the law. Defendants dispute the implication, however, that SB 300 could be taken as an indication that SB 14, or any other bill, was motivated by intentional racial discrimination. The DOJ objected to SB 300 only "insofar as [it] requires a purge of all currently registered voters." ECF No. 670-20 at 25 (ROA.42029). But it expressly stated, "Our analysis has revealed nothing to suggest a discriminatory purpose to the purge involved here." *Id.* at 26 (ROA.42030). The DOJ denied preclearance based on the possibility that the provision might have a discriminatory effect. *Id.* at 27-28 (ROA.42031-32). A federal court enjoined the law because it had not been precleared. A three-judge district court in Texas considered whether the bill "was subject to preclearance under Section 5 of the Voting Rights Act and, if so, whether an injunction should issue preventing its

implementation until it was precleared." *Flowers*, 675 F.2d at 705-06. The Fifth Circuit noted, "This was an issue on which it is hardly conceivable that the plaintiffs could possibly lose." *Id.* at 706. The Fifth Circuit explained that the plaintiffs were "undoubtedly correct" that "the substantive issue concerning the effect of [the bill] was solely within the province of the District of Columbia district court or the Attorney General of the United States." *Id.* at 705. The cited sources thus indicate that SB 300 was enjoined by a federal court because it had not been precleared and that preclearance was denied based on potential discriminatory effect, not because of a discriminatory purpose. In any event, actions by long-dead legislators are not relevant to this Court's analysis. *See supra*, ¶ 3. As Defendants have explained, the most recent and relevant history of the Texas Legislature is further evidence that S.B. 14 was *not* enacted with a discriminatory purpose. *See* Defendants' Proposed Conclusions of Law ¶¶ 63-73.

21. Plaintiffs' recitation of the facts is misleading. The opinion of the three-judge court in *Texas v. United States*, 887 F. Supp. 2d 133, cannot possibly support a discriminatory-purpose finding here for the reasons discussed in Defendants' Proposed Conclusions of Law. *See* Defendants' Proposed Conclusions of Law ¶¶ 66-68. If that vacated opinion retained any continuing force, which it does not, it would be undermined by the United States' confession in the United States Supreme Court that the district court clearly erred in purporting to find that the State's Senate redistricting plan was intentionally discriminatory. *See* Motion to Affirm in Part at 28, *Texas v. United States*, No. 12-496, 2012 WL 6131636, at *28 (U.S. Dec. 7, 2012) *Texas v. United States*, 133 S. Ct. 2885 (2013) (No. 12-496), 2012 WL 6131636, at *28. Meanwhile, Plaintiffs take the statement of the three-judge court in *Perez v. Texas* that the Texas Legislature "*may* have focused on race to an impermissible degree by targeting low-turnout Latino precincts" when drawing a single Texas House District (*Perez v.*

Texas, No. 5:11-cv-360, slip. op. at 6 (W.D. Tex. Mar. 19, 2012) (emphasis added)) wildly out of context. The only question before the court was whether plaintiffs' claim of discrimination was "insubstantial." *Id.* The court never found that the Texas Legislature had, in fact, acted with discriminatory intent in drawing the contested House district. This statement, therefore, cannot support Plaintiffs' claim. *See Veasey*, 830 F.3d at 233 (rejecting reliance on a decision that rejected a congressional district because "the [c]ourt did not base its decision on a conclusion that the legislature intentionally discriminated based upon ethnicity").

22. Defendants do not dispute that these lawsuits were filed, but they provide no evidence of intentional racial discrimination by the State. The cases cited by Plaintiffs relate to acts by those outside the Texas Legislature. Accordingly, they are irrelevant to this Court's inquiry. *See supra*, ¶ 3.

23. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts, but they provide no evidence of intentional racial discrimination by the State. The cases cited by Plaintiffs relate to acts by those outside the Texas Legislature. Accordingly, they are irrelevant to this Court's inquiry. *See supra*, ¶ 3.

24. Plaintiffs' recitation of the facts is misleading. Defendants do not dispute that the DOJ has objected to preclearance of laws enacted by the Texas Legislature, including three objections since 2000, one of which concerned S.B. 14. An objection by DOJ is not evidence that a jurisdiction acted for a racially discriminatory purpose. Regardless, none of the three recent DOJ objections cited by Plaintiffs accused the Texas Legislature of enacting a law with a racially discriminatory purpose, as that is not the standard under which DOJ decides whether to object. *See, e.g.*, *Beer v. United States*, 425 U.S. 130, 141 (1976) ("[T]he purpose of [preclearance under Section 5 of

the Voting Rights Act] has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to the effective exercise of the electoral franchise."). *See* PL1130 (ROA.56411-16, 56426-28, 56455-60). Indeed, even DOJ's objection to S.B. 14 was limited to its purported retrogressive effect; DOJ did not contend at the time that S.B. 14 was enacted with a discriminatory purpose. *See id.* (ROA. 56455-60). The remaining objection letters concern Texas sub-jurisdictions and are, therefore, irrelevant. *See supra*, ¶ 3. The only judgment that Plaintiffs can point to in the last 40 years purporting to find that the Texas Legislature enacted a law with a racially discriminatory purpose (*Texas v. United States*, 887 F. Supp. 2d 133) was vacated by the Supreme Court. *See Texas v. United States*, 133 S. Ct. 2885 (2013); *see* Defendants' Proposed Conclusions of Law ¶¶ 66-68. This leaves Plaintiffs with no "support for a finding of 'relatively recent' discrimination." *Veasey*, 830 F.3d at 233.

25. Plaintiffs' recitation of the facts is misleading. Defendants do not dispute that the DOJ has objected to laws enacted by the Texas Legislature. In *none* of the cited instances involving the Texas Legislature, however, did DOJ accuse the Texas Legislature of enacting a law with a racially discriminatory purpose. *See* PL1130 (ROA.56411-16, 56426-28); PL673 (ROA.41977-80). The remaining objection letters cited by Plaintiffs concern Texas sub-jurisdictions and are, therefore, irrelevant. *See supra*, ¶ 3.

26. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The lawsuits cited by Plaintiffs, however, relate to acts by those outside the Texas Legislature. Accordingly, they are irrelevant to this Court's inquiry. *See supra*, ¶ 3. Moreover, "[i]t is fundamental that unproven allegations are not proof of their content." *Scantek Med., Inc. v. Sabella*, 693 F. Supp. 2d 235, 241 n.1

(S.D.N.Y. 2008); *accord, e.g.*, *Wright v. Farouk Systems, Inc.*, 701 F.3d 907, 911 n.8 (11th Cir. 2012) (rejecting reliance on "complaints . . . from other lawsuits," "because pleadings are only allegations, and allegations are not evidence of the truth of what is alleged").

27. Defendants do not dispute that the court so held. The case cited, however, has nothing to with racial discrimination (*see OCA Greater Houston v. Texas*, 2016 WL 4597636 (W.D. Tex. Sept. 2, 2016)) and, therefore, is not "support for a finding of 'relatively recent' discrimination." *Veasey*, 830 F.3d at 233.

28. Defendants do not dispute that Texas began enforcing S.B. 14 after the decision denying preclearance to the law was vacated by the Supreme Court. *See Texas v. Holder*, 133 S. Ct. 2886 (2013). The other acts cited by Plaintiffs were purportedly undertaken by Texas sub-jurisdictions and are, therefore, irrelevant. *See supra*, ¶ 3.

29. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that socioeconomic disparities persist between Anglo Texans and Hispanic Texans and between Anglo Texans and African-American Texans.

30. Plaintiffs have not carried their burden to prove that socioeconomic disparities in the State are the result of racial discrimination against Hispanic or African-American individuals in any area of public life, whether by state law, state officials, or non-state actors. The general notion that racial discrimination causes socioeconomic disparity, even if true, does not provide any basis to evaluate Plaintiffs' claims of intentional racial discrimination by the Texas Legislature in enacting S.B. 14. Without more explanation of the causal link, if one exists, between particular acts of discrimination and particular results, allegations by Plaintiffs and their experts that past discrimination by the State caused current socioeconomic conditions amounts to

speculation. Acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3.

31. Defendants do not dispute that in Texas, as in other States, local school districts continued to oppose integration of schools after the end of de jure school segregation. *See, e.g.*, *Coal. to Save Our Children v. State Bd. of Educ. of State of Del.*, 90 F.3d 752 (3d Cir. 1996); *Hoots v. Penn.*, 272 F. Supp. 2d 539 (W.D. Pa. 2003); *Berry v. Sch. Dist. of City of Benton Harbor*, 195 F. Supp. 2d 971 (W.D. Mich. 2002), *order clarified*, 206 F. Supp. 2d 899 (W.D. Mich. 2002); *United States v. Yonkers Bd. of Educ.*, 123 F. Supp. 2d 694 (S.D.N.Y. 2000); *Vaughns v. Bd. of Educ. of Prince George's Cnty.*, 941 F. Supp. 579 (D. Md. 1996); *Arthur v. Nyquist*, 904 F. Supp. 112 (W.D.N.Y. 1995). Acts by those outside the Texas Legislature, however, are irrelevant to this Court's analysis. *See supra*, ¶ 3.

32. Defendants do not dispute the existence of the cited cases, but the facts stated do not support a claim that the Texas Legislature engaged in intentional racial discrimination when it enacted S.B. 14. To the extent Plaintiffs' proposed finding refers to acts by those outside the Texas Legislature, it is irrelevant to this Court's analysis. *See supra*, ¶ 3. To the extent Plaintiffs refer to statements or decisions regarding the State made in 1970 and 1983, they fail to explain how those statements are relevant to the purpose of S.B. 14.

33. Defendants do not dispute that Austin and Houston resolved desegregation lawsuits in 1983, but Defendants dispute the relevance and accuracy of the proposed finding that Dallas "did not fully eliminate the vestiges of racial discrimination in its school system until 2003." The cited case indicates that the Dallas Independent School District achieved unitary status in 1994. *See Tasby v. Moses*, 265 F. Supp. 2d 757, 764 (N.D. Tex. 2003). To obtain unitary status, a school district must "prove that

it has complied in good faith with this Court's desegregation orders for a reasonable period of time, and has eliminated the vestiges of prior discrimination to the extent practicable." *Tasby v. Woolery*, 869 F. Supp. 454, 456 (N.D. Tex. 1994). That federal courts monitor the "desegregation obligations" of the Texas Education Agency and local school districts does not inform the Court's determination whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14. Plaintiffs do not identify any act by the Texas Education Agency, and acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3.

34. Defendants do not dispute the general proposition that segregation and racial discrimination in education impaired racial minorities' educational opportunity in the past, but that general proposition does not inform the Court's determination whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14. To the extent Plaintiffs refer to acts by those outside the Texas Legislature, those acts are irrelevant to this Court's analysis. *See supra*, ¶ 3. Even to the extent Plaintiffs refer to discrimination by the State, they do not explain the causal connection, if any, between impairment of educational opportunity by past discrimination and current disparities in educational performance.

35. Defendants do not dispute the general proposition that disciplinary procedures are linked, to some unspecified degree, to drop-out rates, but Defendants dispute the proffered statistics regarding removal and disciplinary procedures. Plaintiffs do not explain what they mean by "comparable low-level infractions," and they provide no context for the allegation that African-American students are "31% more likely to face school disciplinary procedures." Even if accurate, these statistics do not inform the Court's determination whether the Texas Legislature acted with a discriminatory purpose when it enacted S.B. 14. Plaintiffs do not identify any acts by

the State with respect to school discipline, and they do not identify any actor responsible for the "re-segregation" of schools. Acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3.

36. Defendants have no basis to dispute the statistics offered by Plaintiffs, but those statistics do not inform the Court's determination whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14. Acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3. Plaintiffs do not attribute the cited statistics to any particular actor or any particular cause, and they do not explain how they relate to S.B. 14. Without more information about the characteristics of individuals who lack a high school diploma or equivalent, it is not possible to draw any inference from the statistics.

37. Defendants do not dispute that racial discrimination in employment, to the extent it exists, disadvantages African-American and Latino residents, but Plaintiffs' proposed finding does not indicate the extent of alleged racial discrimination in employment by state or local agencies. That a state agency, a county, and certain cities have entered into consent decrees or settlements to remedy race-based employment discrimination does not support an inference of intentional racial discrimination by any of the agencies involved, much less by the Texas Legislature in enacting S.B. 14. Acts by individuals or agencies other than the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3. Without more specific information about the particular practices and claims, it is not possible to draw any inference. In any case, entry into a consent decree or settlement of a claim "to remedy employment discrimination on the basis of race" demonstrates an effort to avoid and prevent race-based discrimination, not a desire to engage in it. That a city police chief admitted nearly 20 years ago to using unspecified racially derogatory language in the workplace is not relevant to the Texas Legislature's purpose in enacting S.B. 14 in 2011.

38. Defendants do not dispute that race-based employment discrimination tends to impair employment opportunities for members of racial minorities; however, Plaintiffs' unsupported, nonspecific statement does not inform the Court's determination whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14. Plaintiffs do not explain how race-based employment discrimination—either generally or in the instances referred to by Plaintiffs—relates to the cited unemployment statistics, and they have not proven that any causal connection exists. Any connection between the cited unemployment statistics and employment discrimination, generally or in specific instances, would rest purely on speculation. To the extent Plaintiffs intend to imply any such connection, Defendants dispute it. And to the extent Plaintiffs rely on acts of discrimination by those outside the Texas Legislature, those acts are irrelevant to this Court's analysis. *See supra*, ¶ 3. The cited statistics do not support Plaintiffs' proposed finding.

39. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that race is correlated with housing patterns in certain parts of Texas (as in the rest of the country). But Plaintiffs cite no evidence demonstrating how this affects access to state offices and the services they provide. Plaintiffs also do not explain how this relates to any action by the State, nor do they explain how this informs the question whether the Texas Legislature engaged in intentional racial discrimination when it enacted S.B. 14. Acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3.

40. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that, in 1927, the Texas Legislature enacted a zoning statute that facilitated housing segregation. But Plaintiffs attribute the fact that race still correlates

with housing patterns in certain parts of Texas to "local zoning, restrictive covenants, and policies of municipal housing authorities," yet they do not explain how this relates to any action by the State, nor do they explain how this informs the question whether the Texas Legislature engaged in intentional racial discrimination when it enacted S.B. 14. Acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3.

41. Defendants do not dispute that a federal district court so found. Discriminatory zoning decisions by the town of Sunnyvale are not relevant to the Texas Legislature's purpose when it enacted S.B. 14. *See supra*, ¶ 3.

42. Defendants do not dispute the general proposition that housing discrimination, to the extent it occurs, can contribute to racial disparities in home ownership, nor do Defendants dispute the home-ownership statistics offered by Plaintiffs. But Plaintiffs do not explain how the cited home-ownership statistics result from race-based housing discrimination, if they do at all, and they offer no proof of any causal relationship. The cited statistics provide no support for the proposed finding.

43. Plaintiffs' recitation of the facts is misleading. Plaintiffs cite no evidence suggesting that any Texas legislator has used "code words" to secretly espouse racist views. Any actions by those outside the Texas Legislature are irrelevant. *See supra*, ¶ 3.

44. Plaintiffs' recitation of the facts is misleading. Even if the 2008 mailer could be interpreted as making a racial appeal, which is not at all clear from the description or the exhibit, the conduct of a political action committee cannot be attributed to the Texas Legislature. Acts by those outside the Texas Legislature are irrelevant to this Court's analysis. *See supra*, ¶ 3.

45. These facts are irrelevant to the question before the Court, and Plaintiffs' reliance on them ignores the Fifth Circuit's decision in this case. Plaintiffs cite no evidence that any part of the 2014 Republican platform was the result of racial animus, and they do not explain what connection selected elements of a party platform from 2014 have, if any, with the Texas Legislature's purpose when it enacted S.B. 14 in 2011. The Fifth Circuit rejected the notion that support for policies—immigration reform was the example cited by the court—with legitimate objectives can be evidence of racial animus simply because *opponents* of such policies, like Plaintiffs, speculate that those polices are the product of racial animus. *Veasey*, 830 F.3d at 233-34 & n.16. Plaintiffs' bootstrapping is not a substitute for evidence.

46. Plaintiffs' recitation of the facts is misleading, and it ignores the Fifth Circuit's decision in this case. Plaintiffs point to no evidence—and there is none—that any member of the Texas Legislature attempted to link voter fraud with the poor or the "inner city." And, concerning statements made about unlawful immigration, as the Fifth Circuit stated, there is no support for the "premise that a legislator concerned about border security or opposed to the entry into Texas of undocumented immigrants is also necessarily in favor of suppressing voting by American citizens of color." *Id.* at 233 n.16.

In support of this proposed factual finding as it relates to then-Lieutenant Governor Dewhurst, Plaintiffs cite an expert report. *See* PL760 at 39-40 (Burton Rep.) (ROA.44025-26). But Dr. Burton's assertion about Dewhurst relies on nothing more than a *proposed* finding of fact filed in the Section 5 case. *See id.* at 39 n.133 (ROA.44025). Plaintiffs cite no actual evidence to support their assertion. Any citation by Plaintiffs to one of their experts' reports in support of a proposed factual finding should be viewed with suspicion by the Court.

47. Have no knowledge whether or not the King Street Patriots posted the referenced photograph. But statements made by persons outside the Texas Legislature do not reflect the views of the Legislature and are irrelevant to this Court's analysis. *See supra* ¶ 3. Furthermore, a photograph posted in 2012 cannot inform the question whether the Texas Legislature engaged in intentional racial discrimination when it enacted S.B. 14 in 2011. Isolated and ambiguous statements made by legislative proponents after enactment are irrelevant to this Court's analysis. *See supra* ¶ 3.[1]

48. Defendants recognize that this Court and the Fifth Circuit have concluded that S.B. 14 has a discriminatory effect on minority voters under Section 2 of the Voting Rights Act. Defendants, however, continue to maintain that that conclusion is based on an incorrect interpretation of Section 2 and clearly erroneous findings of fact. *See* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016). In any event, the Texas Legislature, relying on academic studies and the experiences of other states, concluded that S.B. 14 would *not* have a discriminatory effect. *See* Defendants' Finding of Fact ¶¶ 207-215. None of the evidence Plaintiffs cite in support of their findings concerning the impact of S.B. 14 was before the Texas Legislature when it considered S.B. 14. Accordingly, this evidence—which the Texas Legislature would have been entitled to reject in favor of contrary evidence—is irrelevant. *See* Defendants' Proposed Conclusions of Law ¶¶ 34-43.

49. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. These facts, however, are not relevant for the reasons stated above in paragraph 48.

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[1] In any event, as Plaintiffs concede, the complained-of photo included a white individual as well.

50. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. These facts, however, are not relevant for the reasons stated above in paragraph 48.

51. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. These facts, however, are not relevant for the reasons stated above in paragraph 48.

52. Defendants do not dispute that Drs. Burden, Barreto, and Sanchez so found. The Texas Legislature, however, relying on academic studies and the experiences of other states, legitimately concluded that S.B. 14 would *not* have a discriminatory effect. *See* Defendants' Finding of Fact ¶¶ 207-215. In any event, these analyses were not before the Texas Legislature at the time it was considering S.B. 14. Accordingly, they are not relevant for the reasons stated above in paragraph 48.

53. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. These facts, however, are not relevant for the reasons stated above in paragraph 48.

54. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. These facts, however, are not relevant for the reasons stated above in paragraph 48.

55. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do

not dispute these facts. These facts, however, are not relevant for the reasons stated above in paragraph 48.

56. Defendants do not dispute that Reverend Johnson so testified.

57. Defendants do not dispute that Reverend Johnson so testified.

58. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

59. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

60. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

61. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

62. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

63. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that Ingram so testified. Defendants dispute that the fact of his testimony had any legal effect.

64. Defendants do not dispute SB 14 requires nearly all in-person voters to present specified valid photo ID or ID expired within 60 days to cast a valid ballot. Defendants dispute the statement that statutory exemptions are "narrow in scope" or "burdensome," which is not supported by the evidence.

65. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

66. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

67. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

68. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

69. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that voters who qualify for a disability exemption under the Texas Election Code may vote in person without a photo ID.

70. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

71. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

72. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

73. Defendants do not dispute that the Texas Legislature considered and debated the issue of voter ID for six years before the passage of S.B. 14. The voter ID bills considered and supported by Republicans in 2005, 2007, and 2009 each allowed for a mix of photo and non-photo ID. *See* Defendants' Proposed Findings of Fact ¶¶ 112-148. Defendants dispute Plaintiffs' characterization of any bill as "restrictive."

74. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

75. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

76. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

77. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

78. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

79. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

80. Defendants do not dispute that Republicans in the Texas House attempted to compromise with Democrats by "add[ing] ameliorative provisions—including $7.5 million to encourage voter registration—"to S.B. 362 (Pls.' Proposed Findings of Facts ¶ 80), but that these efforts to compromise were rejected by Democrats, who instead hurled accusations of racial discrimination at Republicans and shut down the legislative process through an extraordinary procedural maneuver in order to block the will of a majority of Texans and the majority of the Texas Legislature. *See* Defendants' Proposed Findings of Fact ¶¶ 144-148.

81. Plaintiffs' recitation of the facts is misleading. There is only one truly radical departure from the ordinary procedural sequence by proponents of voter ID in the entire record: Lieutenant Governor Dewhurst gave the Democrats a do-over after the voter-ID bill had passed the Senate. The Democrats took advantage of that unheard-of courtesy by killing the bill. *See id.* ¶¶ 134-136. In 2011, proponents of S.B. 14, including the Governor, worked within the rules to make sure that opponents of voter-ID legislation could not abuse the legislative process and prevent a vote on a popular bill, which would have had serious political costs for S.B. 14's proponents. *See id.* ¶¶ 89-90, 152-56.

82. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

83. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

84. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Both parties believed that it was in everyone's best interest to get voter ID out of the way so that other important legislative business could be conducted. *See* Defendants' Proposed Findings of Fact ¶¶ 153-155.

85. Plaintiffs' recitation of the facts is misleading. As Plaintiffs acknowledge, the governor's designation of the issue of voter ID as "emergency" was not done to suggest that there was imminent danger to the administration of elections in Texas any more than the governor's designation of the issue of a resolution regarding a federal balanced budget amendment as "emergency" at the same time was meant to suggest that there was imminent danger to the country's finances. *See id.* ¶ 154; Plaintiffs' Proposed Findings of Fact ¶ 84; *see also* Dewhurst Dep. 153:7-13 (ROA.60391) ("Q. Was [S.B. 14] the first piece of business—first piece of legislation that the Senate was taking up in 2011? A. . . . I recall that the first bill I moved was not a bill but a resolution on the balanced budget amendment for the U.S. Congress."). The purpose was to express a legislative priority and help avoid a repeat of the legislative shutdown perpetrated by Democrats in 2009. *See id.*

86. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

87. Defendants do not dispute that the quote from Senator Lucio is correct. Senator Lucio was mistaken, however. Discarding the two-thirds rule did not silence his constituents: Senator Lucio spoke extensively against S.B. 14 during debate on the bill. *See, e.g.*, DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 174:10-186:23 (Jan. 25, 2011) (ROA.68976-79)); *id.*, (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., Vol. I, pp. 14-16 (Jan. 26, 2011)) (ROA.70160-62)); *id.*, (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., Vol. II, pp. 16-18, 23-26 (Jan. 26, 2011)) (ROA.70202-04, 70209-12)); *id. id.*, (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., Vol. III, p. 15 (Jan. 26, 2011)) (ROA.70245)). This debate would have not have been possible if Democrats were permitted to continue to block consideration of voter ID. It was Senator Lucio and his fellow Democrats who sought to silence their opponents. Not vice versa.

88. Plaintiffs' recitation of the facts, which relies on the self-serving characterizations of voter ID opponents, is misleading. The two-thirds rule was regularly discarded when necessary to overcome the intransigence of the minority in the Texas Senate. *See* Defendants' Proposed Findings of Fact ¶¶ 121-125.

89. Plaintiffs' recitation of the facts is misleading. Republicans in 2005 and 2007 did not attempt to "circumvent" the two-thirds rule (Pls.' Proposed Findings of Fact ¶ 89); rather, they used common legislative practices to work within the confines of the rule in an attempt to have open debate and an up-or-down vote on a voter ID bill. *See* Defendants' Proposed Findings of Fact ¶¶ 134-136.

Moreover, it was the absence of Senator Whitmire, *not* Senator Gallegos, that allowed Republicans to achieve the two-thirds' support necessary to debate and vote on H.B. 218. *See id.* When Senator Whitmire belatedly returned to the Senate floor and profanely protested, Lt. Gov. Dewhurst, "knowing that this [was] an important bill to the Democrats," "bent over backwards to respect" the opposition, and allowed another vote. On the second vote, Democrats blocked H.B. 218 from coming up for a vote. Dewhurst Dep. 48:23-49:19 (ROA.60364-65). This was an extraordinary concession never before seen in the Texas Senate. *See* Defendants' Proposed Findings of Fact ¶ 136.

Finally, contrary to Plaintiffs' suggestion, it was a *Republican* Senator—Dr. Bob Deuell—who set up a hospital bed for Senator Gallegos so that Gallegos would have the opportunity to vote on all legislation. As Democratic Senator Eliot Shapleigh acknowledged: "Some Republicans who favor the voter ID bill have been considerate of Gallegos, including Greenville Republican Sen. Bob Deuell. Deuell, a physician, *ordered the hospital bed delivered for his Democratic colleague*. And Lt. Gov. David Dewhurst *didn't push for a vote when Gallegos was absent one day for a biopsy on his liver*." Press Release, Senator Eliot Shapleigh (May 23, 2007) (emphases added), http://shapleigh.org/news/1303-hospital-bed-handy-for-gallegos-senate-ill-will.

90. Defendants do not dispute that Republicans, after years of intransigence by Democrats, followed a long line of precedent and worked within the rules in discarding the two-thirds rule in order to allow full debate and an up-or-down vote on the issue of voter ID. *See* Defendants' Proposed Findings of Fact ¶¶ 122-125.

91. Plaintiffs' recitation of the facts is misleading. Although S.B. 14 called for $2 million to be spent on voter outreach, the money for this effort was already available from the federal government "and would offset the fiscal note." DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 47:19-48:23 (Jan. 25, 2011) (ROA.68944)); *see also id.* 437:1-441:44 (ROA.69042-43) (Secretary of State's testimony on funding).

92. Defendants do not dispute that in order to focus consideration of S.B. 14 in the House, the Speaker of the House established a Select Committee to consider the bill. *See* Defendants' Proposed Findings of Fact ¶ 177. The Select Committee considered testimony from nearly 40 witnesses on the merits of S.B. 14. DEF0001 (Tex. Leg., House Select Committee on Voter Identification and Voter Fraud, Minutes, 82d Leg., R.S. (Mar. 1, 2011) (ROA.70327-29)). Consideration by the Select Committee thus did not "prevent[] meaningful negotiation" on an issue that had been debated for six years. Pls.' Proposed Findings of Fact ¶ 92. Democrats had shown for years that they were uninterested in negotiation or compromise on voter ID.

93. Defendants do not dispute that Speaker Straus appointed the members of the Select Committee, including appointing then-Representative and now Plaintiff Marc Veasey, a Democrat and vocal opponent of voter-ID laws, as vice-Chair of the Select Committee on Voter Fraud, where then-Representative Veasey was able to voice his concerns and propose changes to legislation. Trial Tr. 237:19-239:2; 248:14-16 (Sept. 2, 2014) (Veasey) (ROA.98869-71; ROA.98880).

94. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

95. Plaintiffs' recitation of the facts is misleading. Although S.B. 14 called for $2 million to be spent on voter outreach, the money for this effort was already available from the federal government "and would offset the fiscal note." DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 47:19-48:23 (Jan. 25, 2011) (ROA.68944)); *see also id.* 437:1-441:44 (ROA.69042-43) (Secretary of State's testimony on funding). Accordingly, S.B. 14 would require no new expenditure.

96. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

97. Plaintiffs' recitation of the facts is misleading. The best evidence of the validity of Representative Martinez Fischer's point of order was Speaker Strauss's decision overruling it.

98. Plaintiffs' recitation of the facts is misleading. The inclusion of the EIC provision was necessary to resolve differences between the House and Senate versions of S.B. 14. The Senate version of S.B. 14 included an exception to the photo-ID requirement for people who are indigent. *See* Defendants' Proposed Findings of Fact ¶ 168. After the Senate's indigency provision was excised at Democratic Representative Anchia's suggestion and with Democratic legislators' votes, the conferees resolved the difference by adding a provision creating EICs, which would be free of charge. *See* DEF0001 (Conference Committee Report, Section-by-Section Analysis at 6-7 (ROA.71765-66)); Trial Tr. 98:14-18 (Sept. 11, 2014) (Williams) (ROA.101283) ("Q: [T]here is no exception in SB 14 for people who are indigent in Texas, correct? A: [T]he Election Identification Certificate is free of charge. That is the exception.").

99. Plaintiffs' recitation of the facts is misleading. It was *Democrats* in the House who first criticized the indigency provision in S.B. 14 and later voted with Republicans to remove it. *See* Defendants' Proposed Findings of Fact ¶¶ 184-185. The Conferees then added the EIC provision to reconcile the House and Senate versions while making sure that those with less means would not face obstacles to voting. *See* DEF0001 (Conference Committee Report, Section-by-Section Analysis at 6-7 (ROA.71765-66)); Trial Tr. 98:14-18 (Sept. 11, 2014) (Williams) (ROA.101283) ("Q: [T]here is no exception in SB 14 for people who are indigent in Texas, correct? A: [T]he Election Identification Certificate is free of charge. That is the exception."). In addition, the final version of S.B. 14 "require[d] the secretary of state to conduct a statewide effort to educate voters regarding the identification requirements for voting." DEF0001 (Conference Committee Report, Section-by-Section Analysis at 2 (ROA.71761)).

100. Plaintiffs' recitation of the facts is misleading. Although someone in the Secretary of State's office may have communicated an estimate of the number of Texas voters who did not have a Texas driver license or personal ID to a member of Lt. Gov. Dewhurt's staff, that same person warned that the estimate was unreliable because the Secretary of State's office was having problems matching the list of driver's licenses to the list of registered voters. *See* Trial Tr. 72:13-73:2 (Sept. 10, 2014) (Dewhurst) (ROA.100834-35). In any event, Plaintiffs concede that no matching analysis relating to race was performed by the Secretary of State's office until long after the passage of S.B. 14. *See* Pls.' Proposed Findings of Fact ¶ 103.

101. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

102. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

103. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

104. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. In addition, the Texas Legislature received expert testimony that warned against relying upon this type of database-matching technique. Dr. Toby Moore, the former geographer of the voting section of the Civil Rights Division of the DOJ and a project manager for the Carter-Baker Commission on Election Reform, explained:

> There have been kind of three approaches to trying to identify those without IDs and to determine their demographics. The first approach has been to try to match between data bases, between voter registration databases and Department of Motor Vehicle databases, for example. That has generally not proven to be successful. Those databases are very difficult to match between. There is some interesting information to come out of those attempts. But in general, *I would encourage you to avoid any kind of database matching to arrive at your information.*

DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 338:17-339:2 (Mar. 10, 2009) (ROA.72516-17) (emphasis added)).

105. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

106. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

107. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. But, again, the Texas Legislature received expert testimony that warned against relying upon this type of database-matching technique. *See supra*, ¶ 104. In any event, Plaintiffs concede that no matching analysis relating to race was performed by the Secretary of State's office until long after the passage of S.B. 14. *See* Pls.' Proposed Findings of Fact ¶ 103.

108. Plaintiffs' recitation of the facts is misleading. Although someone in the Secretary of State's office may have communicated an estimate of the number of Texas voters who did not have a Texas driver license or personal ID to a member of Lt. Gov. Dewhurt's staff, that same person warned that the estimate was unreliable because the Secretary of State's office was having problems matching the list of driver's licenses to the list of registered voters. *See* Trial Tr. 72:13-73:2 (Sept. 10, 2014) (Dewhurst) (ROA.100834-35). In any event, Plaintiffs concede that no matching analysis relating to race was performed by the Secretary of State's office until long after the passage of S.B. 14. *See* Pls.' Proposed Findings of Fact ¶ 103.

109. Defendants do not dispute that the Texas Legislature never received evidence regarding the number of Texas voters who lacked S.B. 14 ID. Plaintiffs concede that no matching analysis relating to race was performed by the Secretary of State's office until long after the passage of S.B. 14. *See* Pls.' Proposed Findings of Fact ¶ 103.

110. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

111. Plaintiffs' recitation of the facts is misleading. The cited portion of the record shows that the Secretary of State's analysis was not released for a specific reason: it was still being reviewed and was not ready for release. McGeehan testified that she "probably" asked if the matching analysis could be released, and "probably the response was no, you know, we're still analyzing this." Trial Tr. 303:2-4 (Sept. 8, 2014) (ROA.100297). In response to a question whether Mr. Shorter and Mr. Sepehri had "concerns about the different results from the different queries," McGeehan responded, "We didn't really have a substantive conversation about it, so all I knew was they were still looking at it." *Id.* at 303:10-14 (ROA.100297). That she was not given "any substantive reason as to why it couldn't be released," *id.* at 304:9-11 (ROA.100298), is consistent with her testimony that the analysis was not provided at the time because it was not ready. The cited testimony does not support Plaintiffs' implication that Mr. Shorter and Mr. Sepehri refused to release the analysis without giving a reason.

112. Plaintiffs' recitation of the facts appears to be inaccurate. The cited source does not indicate that the analysis to which McGeehan was referring was given to the Office of the Lieutenant Governor. *See* Trial Tr. 304:21-25 (Sept. 8, 2014) (McGeehan) (ROA.100298).

113. Defendants do not dispute that the court in *Texas v. Holder* rejected preclearance of S.B. 14 on the basis of the law's purportedly retrogressive effect. Texas, however, disputed that S.B. 14 has a retrogressive effect (*see* Appellant's Jurisdictional

Statement, *Texas v. Holder*, No. 12-1028 (U.S. Feb. 19, 2013)), and continues to contend that S.B. 14 does not have a disparate impact on minorities (*see* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016)). Moreover, the Texas Legislature, relying on academic studies and the experiences of other states, concluded that S.B. 14 would *not* disparately affect minorities. *See* Defendants' Proposed Findings of Fact ¶¶ 207-216. Nonetheless, the Texas Legislature remained open to adjusting the law if future elections demonstrated such a need. *See id.* ¶ 172. But the elections that followed implementation of S.B. 14 only *confirmed* that it would not negatively impact Texas voters, including minorities. *See id.* ¶¶ 45-51. Accordingly, the Texas Legislature had no need to adjust the law.

114. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs, however, continue to ignore that Texas disputes that S.B. 14 has a retrogressive effect. *See supra*, ¶ 113.

115. Defendants do not dispute that Texas began enforcing S.B. 14 after the decision denying preclearance to the law was vacated by the Supreme Court. *See Texas v. Holder*, 133 S. Ct. 2886.

116. Defendants do not dispute that for years Republicans attempted to compromise with Democrats on the issue of voter ID by sacrificing the Republican preference for the security of allowing only photo ID, and that in 2011, with no compromise in sight, Republicans pursued their and their constituents' preference for a law that required voters to produce widely available and widely held photo identification. *See* Defendants' Proposed Findings of Fact ¶¶ 93-99, 112-151, 182-183. The Texas Legislature heard substantial evidence that photo-only voter ID bills do not disparately impact minority voters. *See id.* ¶¶ 207-214.

117. Defendants do not dispute that for years Republicans attempted to compromise with Democrats on the issue of voter ID by sacrificing the Republican preference for the security of allowing only photo ID, and that in 2011, with no compromise in sight, Republicans pursued their and their constituents' preference for a law that required voters to produce widely available and widely held photo identification. *See* Defendants' Proposed Findings of Fact ¶¶ 93-99, 112-151, 182-183. The Texas Legislature heard substantial evidence that photo-only voter ID bills do not disparately impact minority voters. *See id.* ¶¶ 207-214.

118. Defendants do not dispute that for years Republicans attempted to compromise with Democrats on the issue of voter ID by sacrificing the Republican preference for the security of allowing only photo ID, and that in 2011, with no compromise in sight, Republicans pursued their and their constituents' preference for a law that required voters to produce widely available and widely held photo identification. *See* Defendants' Proposed Findings of Fact ¶¶ 93-99, 112-151, 182-183. The Texas Legislature heard substantial evidence that photo-only voter ID bills do not disparately impact minority voters. *See id.* ¶¶ 207-214.

119. Plaintiffs' recitation of the facts is misleading. Although years later, a legislative aide could not give a specific, comprehensive explanation why S.B. 14 contained fewer categories of acceptable ID than S.B. 362, the contemporaneous legislative record shows why. During the House's consideration of S.B. 14, Democratic Representative Anchia inquired as to why "the identification requirements of SB 14 are more restrictive than SB 362 from last session?" DEF0001 (H.J. of Tex., 82d Leg., R.S. 918 (Mar. 21, 2011) (ROA.70855)). The primary sponsor of S.B. 14 in the House responded that:

> We've had two additional years to see that photo ID is working in other states. We've also had two additional years to hear from the public on

> their concerns of the integrity of the ballot box. Only a true photo ID bill can deter and detect fraud at the polls and can protect the public's confidence in the election.

Id. (ROA.70855). As Representative Smith later recounted:

> I think everybody understands why non-photo ID was taken out of Senate Bill 362 [in 2009] because it was just a demand by our constituents that we require a photo ID in order for people to vote and they were very cynical about the notion of allowing non-photo IDs . . .. [M]y [primary] opponent used [my support for non-photo ID] against me in the most recent election politically without mentioning that he too had voted for that same version of the bill. So this notion of letting people vote with their library cards feeds the perception that you're in favor of liberal laws allowing people to vote even under circumstances where they were not legally entitled to do so.

Trial Tr. 339:10-22 (Sept. 8, 2014) (Smith) (ROA.100333). Moreover, S.B. 362 allowed for less reliable ID because Republicans were trying to compromise with Democrats. By 2011, it was clear that no compromise was possible:

> [F]or then six long years, [Dewhurst] had been meeting regularly with the Democrat Senators to [try to get them to] agree on a bipartisan bill, because . . . a super majority of, not only Anglo, but Hispanic and African American voters, during that time period from 2008 through 2011, were in favor of a Voter ID, and that we really ought to work together and come up with a bill. [But despite] [a]ll of the flexibility afforded in [H.B.] 218 and [S.B.] 362[, they were] voted against time after time by — by the Democrat[s] . . . . [So, Dewhurst] discussed with Senator Fraser [S.B. 14's sponsor] that maybe it's time to focus . . . on a bill . . . model[ed] after the Indiana and Georgia bills.

Dewhurst Dep. 112:11-113:3 (ROA.60380-81). The result was S.B. 14, with its photo ID requirement.

Likewise, although years later a legislative aide could not give a specific explanation why S.B. 14 did not allow employee IDs, legislators explained that they were

worried that increasing the variety of IDs would lead to confusion at the polls. *See* Defendants' Proposed Findings of Fact ¶¶ 173-174.

120. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. *See supra*, ¶ 119.

121. Plaintiffs' recitation of the facts is misleading. Although years later Representative Harless could not give a specific explanation why particular provisions of S.B. 14 were written as they were, legislators explained their reasoning at the time S.B. 14 was considered. *See supra*, ¶ 119; Defendants' Proposed Findings of Fact ¶¶ 173-174.

122. Plaintiffs' recitation of the facts is misleading. Although this information may have been theoretically "available" to the Texas Legislature, there is no evidence that any legislator was aware of the information. *See* Defendants' Proposed Conclusions of Law ¶ 132. And if the Legislature was not aware of this information, it could not have been a factor in its decision. *See Feeney*, 442 U.S. at 278-79 (analyzing whether disparate impact was intentional only *after* determining that the legislature was, in fact, aware that such an impact would result). In fact, Democrats conceded at the time that they had no evidence that S.B. 14 would disparately impact minorities. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 29 (Jan. 26, 2011)) (ROA.70215) (Senator Ellis: "I can no more prove, without this bill being in effect, that it has the disparate impact that folks on my side are afraid of."). Plaintiffs' own expert had earlier offered a similar concession. *See* DEF0022 (Robert S. Erikson & Lorraine C. Minnite, Modeling Problems in the Voter Identification-Voter Turnout Debate, 8 Election Law Journal 85, 98 (2009)) (ROA.78232) ("It should

be evident that our sympathies lie with the plaintiffs in the voter ID cases. Yet we see the existing science regarding vote suppression as incomplete and inconclusive.").

123. Defendants do not dispute that S.B. 14 allowed voters six days to cure provisional ballots. This was longer than that provided by Georgia in its precleared voter ID bill and longer than the period recommended by the Carter-Baker Commission. *See* Defendants' Proposed Findings of Fact ¶¶ 67, 73.

124. Defendants do not dispute that S.B. 14 was modeled after voter ID bills enacted in Georgia and Indiana. The Texas Legislature concluded that S.B. 14 would not disparately impact minorities and voter ID opponents conceded that they could not prove otherwise. *See id.* ¶¶ 163, 207-214.

125. Defendants do not dispute that S.B. 14 does not allow the use of student IDs. Legislators expressed concern with this type of amendment on the basis that expanding the number of acceptable IDs would cause too much confusion among election officials. *See, e.g.* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 10-12 (Jan. 26, 2011)) (ROA.70196-98; ROA.70201-02); Williams Dep. 47:20-23 (ROA.62696) (expressing worry that allowing many forms of ID "makes it very difficult for the person who's working at the polls—they have so many things that they have to look at—and they don't know whether it's a valid document or not."); *id.* 45:19-22 (ROA.62696); *see also* Patrick Dep. 327:10-13 (ROA.64646) ("Q: . . . To your knowledge, do all those state-issued state employment IDs, are – do they all look alike? A: No, they all look – they're actually different."); Bueck Dep. 143:5-18 (ROA.57921). This was particularly true regarding student IDs:

> [T]here are arguably hundreds of different community colleges and universities, and every student ID from a different university or college or a community college would have been different, and it would have been virtually impossible for election officials to be able to know which ones

> were valid and which ones weren't, which ones had been forged, which ones had not.

Dewhurst Dep. 200:21-201:02 (ROA.61045-46); *see also* Williams Dep. 45:9-18 (ROA.62696).

126. Defendants do not dispute that Indiana had few problems implementing its law. Texas, however, is a much larger and more populous State with many more institutions. *See* Dewhurst Dep. 200:21-201:02 (ROA.61045-46); *see also* Williams Dep. 45:9-18 (ROA.62696).

127. Defendants do not dispute that Republicans in the Texas Legislature believed that increasing confidence in elections integrity would increase voter participation.

128. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

129. Defendants do not dispute that no two voter ID bills are identical. *See supra*, ¶ 125. The Texas Legislature legitimately concluded that expanding the number of acceptable IDs would cause too much confusion among election officials. *See supra*, ¶ 125.

130. Defendants do not dispute that no two voter ID bills are identical. Plaintiffs ignore, however, that during the implementation of S.B. 14, Texas assured that every county contained a location where EICs could be obtained and reduced the cost of documents necessary to obtain an EIC. *See* Defendants' Proposed Findings of Fact ¶¶ 24-34.

131. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

132. Defendants do not dispute that no two voter ID bills are identical. The Texas Legislature legitimately concluded that expanding the number of acceptable IDs would cause too much confusion among election officials. *See supra* ¶ 125.

133. Defendants do not dispute that S.B. 14's indigency provision, which was modeled after Indiana's, was excised at the behest of *Democrats* and with Democrats' votes and was replaced by the EIC provision. *See* Defendants' Proposed Findings of Fact ¶¶ 184, 195.

134. Prior to the enactment of S.B. 14, the risk of in-person voter fraud, as well as the threat to public confidence in elections posed by that risk, had been recognized by the federal government, the Supreme Court, the Carter-Baker Commission, and other states. *See id.* ¶¶ 221-224. Indeed, even Plaintiffs themselves conceded that requiring photo ID increased their confidence in elections. *See id.* ¶ 225.

135. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute this fact.

136. Plaintiffs misrepresent the facts. The Texas Legislature believed that in-person voter fraud was a real problem in Texas and was very difficult to detect. *See id.* ¶¶ 221-230, 232-237, 239, 242-245; DEF0001 (Tex. Leg., Senate Committee of the Whole (82d Leg.) (Jan. 25, 2011), at 26:6-27:4, 507:23-508:22) (ROA.68939, 69059)); *id.* (Tex. Leg., House Select Committee on Voter Identification Voter Fraud Hearing (82d Leg.) (March 1, 2011), at Vol. I 20:5-13, 22:7-10, 22:22-23:8, 26:13-15)

(ROA.70349, 70351, 70355)); *id.* (Tex. Leg., House Floor Debate (82d Leg.) (March 23, 2011)), Vol. II pp. 23:19-24:1 (ROA.71233-34)); *id.* (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 211:10-214:10, 281:10-13 (March 10, 2009) (ROA.72389-92, 72459)). In fact, one of the Hispanic members of the House who voted in favor of S.B. 14 testified that his "campaign worker's father" had voted despite that worker's father being "deceased." DEF0001 (Tex. Leg., House Floor Debate (82d Leg.) (March 23, 2011)), at Vol. III pp. 117:7-9 (ROA.71571). And the House heard evidence from Harris County's Tax Assessor and acting Voter Registrar of ballots cast in the name of dead people who remained on the voting rolls—an example of registration and impersonation fraud that would have been prevented by a photo-ID requirement. *See* Defendants' Proposed Findings of Fact ¶ 191.

The Supreme Court found the same in *Crawford*, and the Fifth Circuit did so in *Veasey* and *Steen*. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 194-97 (2008); *Veasey*, 830 F.3d at 249; *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 394 (5th Cir. 2013). It is therefore not open to Plaintiffs or this Court to reach a different conclusion on this legislative fact:

> To put this in legalese, whether [voter fraud is a problem and whether] a photo ID requirement promotes public confidence in the electoral system [are] "legislative fact[s]"—[] proposition[s] about the state of the world, as opposed to . . . proposition[s] about these litigants or about a single state. Judges call the latter propositions "adjudicative facts." On matters of legislative fact, courts accept the findings of legislatures and judges of the lower courts must accept findings by the Supreme Court.

Frank v. Walker, 768 F.3d 744, 750 (7th Cir. 2014) (citations omitted).

137. Plaintiffs' recitation of the facts is misleading. The Texas Legislature limited the forms of acceptable ID to avoid confusion at the polls. *See supra*, ¶ 125.

138. Defendants do not dispute that Ms. Trotter was able to vote. To extent that Plaintiffs are suggesting that a poll worker is as capable as the Department of Public Safety ("DPS") of verifying the propriety of the supporting documents necessary to obtain EIC, Defendants disagree. Plaintiffs point to no evidence in support of this contention, and the Texas Legislature was permitted to conclude that DPS was better suited to this task.

139. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

140. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

141. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136. In addition, Plaintiffs are incorrect that requiring ID can only prevent impersonation. For example, vote harvesters use the registrations of the elderly, blind, and disabled to vote. *See* Trial Tr. 221:17-222:9 (Sept. 3, 2014) (Wood) (ROA.99153-54). But unless these voters have *also* signed up to vote by mail or gone through the process to obtain an exemption from S.B. 14, they would have to vote in person, at which point they would have to show photo ID. S.B. 14 thus helps eliminate some portion of effective vote harvesting. And the Texas Legislature heard evidence that requiring voters to prove their identity with an ID could render registration fraud ineffective. *See* Defendants' Proposed Findings of Fact ¶¶ 245-246.

142. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

143. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

144. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

145. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

146. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136. The experts on the Carter Baker Commission further refute Plaintiffs' suggestion with their conclusion that, although "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting, . . . both occur, and it could affect the outcome of a close election." Carter-Baker Commission Report at 18 (ROA.77850). The Commission went on to observe that "the perception of possible fraud contributes to low confidence in the system." *Id.*

147. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

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157. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

158. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 136.

159. Prior to the enactment of S.B. 14, the risk of in-person voter fraud, as well as the threat to public confidence in elections posed by that risk, had been recognized by the federal government, the Supreme Court, the Carter-Baker Commission, and other states. *See* Defs.' Proposed Findings of Fact ¶¶ 221-228, 231-237. Indeed, even Plaintiffs themselves conceded that requiring photo ID increased their confidence in elections. *See id.* ¶ 225. Plaintiffs' own expert, Dr. Minnite, explained, "we want to believe that our elections truly reflect the will of the voter and that are free of corruption. So, it's a very, very important issue that there not be any voter fraud." Trial Tr. 137:14-17 (Sept. 8, 2014) (Minnite) (ROA.100131). In any event, the use of voter fraud by long-dead legislators as a pretext for discrimination "cannot, in the manner of original sin, condemn" S.B. 14. *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 74 (1980) (plurality op.); *see supra* ¶ 3.

160. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. But the use of voter fraud by long-dead legislators as a pretext for discrimination "cannot, in the manner of original sin, condemn" S.B. 14. *Bolden*, 446 U.S. at 74 (plurality op.); *see supra*, ¶ 3.

161. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. But the use of voter fraud by long-dead legislators as a pretext for discrimination "cannot, in the manner of original sin, condemn" S.B. 14. *Bolden*, 446 U.S. at 74 (plurality op.); *see supra*, ¶ 3.

162. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. But the use of voter fraud by long-dead legislators as a pretext for discrimination "cannot, in the manner of original sin, condemn" S.B. 14. *Bolden*, 446 U.S. at 74 (plurality op.); *see supra*, ¶ 3.

163. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. But the use of voter fraud by long-dead legislators as a pretext for discrimination "cannot, in the manner of original sin, condemn" S.B. 14. *Bolden*, 446 U.S. at 74 (plurality op.); *see supra*, ¶ 3.

164. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. But the use of voter fraud by long-dead legislators as a pretext for discrimination "cannot, in the manner of original sin, condemn" S.B. 14. *Bolden*, 446 U.S. at 74 (plurality op.); *see supra*, ¶ 3.

165. These purported acts by persons outside the Texas Legislature are irrelevant to this Court's inquiry. *See supra*, ¶ 3.

166. Plaintiffs are incorrect. The Texas Legislature concluded that passing S.B. 14 would increase public confidence in elections. *See* Defendants' Proposed Findings of Fact ¶¶ 205-206. It did so on the basis of evidence that passing a voter identification law could increase participation in the electoral process by enhancing public confidence in elections. Trial Tr. 397:25-398:8 (Sept. 10, 2014) (Fraser) (ROA.101159-60). Among other things, the legislature was informed that,

> [S]cholars of American politics generally agree that voter turnout is determined largely by idiosyncratic factors, such as an individual's intrinsic value of voting (i.e., does the individual feel a duty to vote) as opposed to political institutions. For this reason, factors that influence trust and confidence in the integrity of the electoral process are generally thought to be important determinants of an individual's decision to vote. For all these reasons, it is theoretically plausible that photo identification requirements increase turnout.

DEF0001 (Tex. Leg., Senate Committee of the Whole (81st Leg.) (Mar. 11, 2009), Exhibit 7, at 2 (ROA.73372) (citations omitted)). The Texas Legislature also had before it the Carter-Baker Commission Report, which announced that "the perception of possible fraud contributes to low confidence in the system" and, therefore, "[t]he electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to *confirm the identity of voters*." Carter-Baker Commission Report at 18 (emphasis added) (ROA.77850). The Texas Legislature also considered the Supreme Court's pronouncement in *Purcell* that "[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

The Supreme Court found the same in *Crawford*, and the Fifth Circuit did so in *Veasey* and *Steen*. *Veasey*, 830 F.3d at 249; *Steen*, 732 F.3d at 394. It is not open to Plaintiffs or this Court to reach a different conclusion on this legislative fact:

> To put this in legalese, whether a photo ID requirement promotes public confidence in the electoral system is a "legislative fact"—a proposition about the state of the world, as opposed to a proposition about these litigants or about a single state. Judges call the latter propositions "adjudicative facts." On matters of legislative fact, courts accept the findings of legislatures and judges of the lower courts must accept findings by the Supreme Court.

Frank, 768 F.3d at 750.

Plaintiffs themselves agreed that requiring photo ID increased their confidence in elections. *See* Defendants' Proposed Findings of Fact ¶ 225. And Plaintiffs' own expert, Dr. Minnite, explained that "we want to believe that our elections truly reflect the will of the voter and that are free of corruption. So, it's a very, very important issue that there not be any voter fraud." Trial Tr. 137:14-17 (Sept. 8, 2014) (Minnite) (ROA.100131).

167. Defendants do not dispute that this is Dr. Burden's view. But Dr. Burden's view is contrary to evidence received and credited by the Texas Legislature. *See supra*, ¶ 166.

168. Defendants do not dispute that this is Dr. Burden's view. But the Texas Legislature received and credited evidence that requiring voters to prove their identity would increase confidence in elections and, in turn, turnout. *See supra*, ¶ 166.

169. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do

not dispute these facts. The Texas Legislature did not, however, need to find individual voters who sat out elections due to concerns of voter fraud. The Texas Legislature had ample evidence, which it credited, that requiring voters to prove their identity would increase confidence in elections and, in turn, turnout. *See supra*, ¶ 166.

170. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The Texas Legislature did not, however, need to find individual voters who sat out elections due to concerns of voter fraud. The Texas Legislature had ample evidence, which it credited, that requiring voters to prove their identity would increase confidence in elections and, in turn, turnout. *See supra*, ¶ 166.

171. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The Texas Legislature did not, however, need to find individual voters who sat out elections due to concerns of voter fraud. The Texas Legislature had ample evidence, which it credited, that requiring voters to prove their identity would increase confidence in elections and, in turn, turnout. *See supra*, ¶ 166.

172. Plaintiffs' recitation of the facts is misleading. During debate of S.B. 14, Senator Fraser unambiguously rejected the suggestion that he was relying solely on polls and the experience of other states in coming to the conclusion that S.B. 14 would not disparately impact minorities. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 82d Leg., R.S., at 164:15-166:23 (Jan. 25, 2011) (ROA.68973-74)). The Texas Legislature not only had before it opinion polls showing large support for requiring photo ID and the experience of other states, it also empirical studies concluding that voter ID laws did not disparately impact minorities and the Democrats' concession

that they had no contrary evidence. *See* Defendants' Proposed Findings of Fact ¶¶ 163, 207-214.

173. Plaintiffs' recitation of the facts is misleading. None of the evidence cited by Plaintiffs even suggests that public opinion polls were influenced by politicians rather than vice versa. Moreover, Plaintiffs' supposition is refuted by the fact that (1) public opinion polls in Texas matched polls taken nationwide (*see id.* ¶¶ 79-86), (2) concern about voter fraud and the need for voter ID was echoed by the Carter-Baker Commission, the federal government, and other states (*see id.* ¶¶ 113, 115, 231-237), and (3) the finding of Plaintiffs' own expert that "persons who were asked to show identification when voting in 2006 were *even more supportive* of voter identification requirements than other respondents." DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7, at 8 (March 11, 2000) (ROA.73378) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007))) (emphasis added). In fact, S.B. 14 was just one of "nearly 1,000" voter ID "bills . . . introduced in a total of 46 states" between 2001 and 2011. DEF0053 (National Conference of State Legislatures, *Voter Identification Requirements* (June 27, 2012)) at 5 (ROA.78671). Public concern about voter fraud and support for voter ID was substantial and real.

174. Defendants do not dispute that the Texas Legislature relied on public opinion polls that were available and that showed overwhelming support for voter ID. *See* Defendants' Proposed Findings of Fact ¶¶ 79-87. Plaintiffs point to no other alternative polls conducted. Representative Ana Hernandez's anecdotal hearsay is no substitute for the neutral polling relied on by the Texas Legislature.

175. Plaintiffs' recitation of the facts is misleading. No one in the Texas Legislature claimed that requiring voter ID would solve all election problems. Rather, S.B. 14 was just one step of many taken by the Texas Legislature to ensure the integrity of Texas elections. In addition to requiring photo ID at the polls, the Texas Legislature enacted laws aimed at preventing mail-in ballot fraud, enhance the integrity of voter rolls, ensure the accuracy of vote counts, and protect the security of voting machines. *See id.* ¶¶ 104-11, 127, 137, 149, 187-188.

176. Defendants do not dispute that mail-in ballot fraud is a serious concern, which is why the Texas Legislature has acted to prevent mail-in ballot fraud on multiple occasions. *See id.* ¶¶ 106, 137, 187.

177. Defendants do not dispute that mail-in ballot fraud is a serious concern, which is why the Texas Legislature has acted to prevent mail-in ballot fraud on multiple occasions. *See id.* ¶¶ 106, 137, 187. In-person voter fraud is also a serious concern. *See supra*, ¶ 136.

178. Defendants agree that S.B. 14 did not address mail-in ballots. The Texas Legislature has, however, acted to prevent mail-in ballot fraud on multiple occasions. *See* Defendants' Proposed Findings of Fact ¶¶ 106, 137, 187.

179. Plaintiffs' recitation of the facts is misleading. Most of the plaintiffs and voter-witnesses in this case who complained about having difficulty obtaining S.B-14-compliant ID were *elderly*. *See id.* ¶¶ 39, 43. Preserving the ease of mail-in voting for the elderly goes a long way towards remedying and mitigating the minimal negative impact Plaintiffs have been able to show in the case. *See id.*; *see also* PL273 (ROA.38989) (noting that desire of voter ID proponents to lessen the burden on the elderly "who may not have access to a birth certificate"). In any event, Plaintiffs have no evidence suggesting that the Texas Legislature was aware that Anglos were more

likely to vote by mail than minorities. Accordingly, that fact, even if true, is irrelevant to this Court's analysis. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

180. Defendants do not dispute that mail-in ballot fraud is a serious concern, which is why the Texas Legislature has acted to prevent mail-in ballot fraud on multiple occasions. *See* Defendants' Proposed Findings of Fact ¶¶ 106, 137, 187.

181. Defendants do not dispute that mail-in ballot fraud is a serious concern, which is why the Texas Legislature has acted to prevent mail-in ballot fraud on multiple occasions. *See* Defendants' Proposed Findings of Fact ¶¶ 106, 137, 187.

182. Plaintiffs' recitation of the facts is misleading. Whether or not this information was theoretically "available," Plaintiffs have no evidence suggesting that the Texas Legislature was aware that Anglos were more likely to vote by mail than minorities. And if the Legislature was not aware of this information, it could not have been a factor in its decision. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

183. Plaintiffs' recitation of the facts is misleading. Requiring voters to confirm their identity with government-issued photo ID can reduce the incidence of non-citizen voting. *See* Defendants' Proposed Findings of Fact ¶¶ 269-274.

184. Plaintiffs' recitation of the facts is misleading. While some legislators linked voter ID with non-citizen voting, no legislator ever stated "that non-citizen voting was the *principal* purpose behind tightening voter ID requirements." Pls.' Proposed Findings of Fact ¶ 184 (emphasis added). The principal purpose was always to prevent voter fraud and increase public confidence in elections. *See* Defendants' Proposed Findings of Fact ¶¶ 205-206.

185. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Statements by persons outside the Texas Legislature, however, are irrelevant to this court's analysis. *See supra*, ¶ 3.

186. Defendants do not dispute that Lt. Gov. Dewhurst was concerned with voting by non-citizens.

187. Plaintiffs' recitation of the facts is misleading. Requiring voters to confirm their identity with government-issued photo ID can reduce the incidence of non-citizen voting. *See* Defendants' Proposed Findings of Fact ¶¶ 269-274. In addition, Senator Fraser also stated that the purpose of S.B. 362 was to prevent voter fraud. *See id.* ¶ 205.

188. Plaintiffs' speculation is not evidence. None of the evidence cited by Plaintiffs even suggests that public opinion polls were influenced by politicians rather than vice versa. Moreover, Plaintiffs' supposition is refuted by the fact that (1) public opinion polls in Texas matched polls taken nationwide (*see id.* ¶¶ 79-86), (2) concern about voter fraud and the need for voter ID was echoed by the Carter-Baker Commission, the federal government, and other states (*see id.* ¶¶ 113, 115, 231-237), and (3) the finding of Plaintiffs' own expert that "persons who were asked to show identification when voting in 2006 were *even more supportive* of voter identification requirements than other respondents." DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7, at 8 (March 11, 2000) (ROA.73378) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007))) (emphasis added). In fact, S.B. 14 was just one of "nearly 1,000" voter ID "bills introduced in a total of 46 states" between 2001 and 2011. DEF0053 (National Conference

of State Legislatures, *Voter Identification Requirements* (April 7, 2012)) at 5 (ROA.78671). Public concern about voter fraud and support for voter ID was substantial and real.

189. Defendants do not dispute that various senators were concerned with voting by non-citizens.

190. Plaintiffs' recitation of the facts is misleading. The speculation by a voter ID opponent notwithstanding, non-citizen voting is a legitimate concern. *See See* Defendants' Proposed Findings of Fact ¶ 271.

191. Defendants do not dispute that the purpose of S.B. 14 was to prevent voter fraud and increase public confidence in elections.

192. Defendants do not dispute that the purpose of S.B. 14 was to prevent voter fraud and increase public confidence in elections. Defendants do dispute, however, any implication that the failure of proponents of voter ID to focus on non-citizen voting can be construed as evidence that the Legislature enacted S.B. 14 for a racially discriminatory purpose.

193. Defendants do not dispute that some supporters of voter ID were concerned with voting by non-citizens. The "supporters" referred to by Plaintiffs here are persons outside the Texas Legislature. *See* Hebert 2014 Dep. 200:12-201:4 (ROA.61417-18). Accordingly, their motivation for supporting S.B. 14 is irrelevant. *See supra*, ¶ 3.

194. Plaintiffs' recitation of the facts is misleading. Requiring voters to confirm their identity with government-issued photo ID can reduce the incidence of non-citizen voting. *See* Defendants' Proposed Findings of Fact ¶¶ 269-274.

195. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The views of persons outside the Texas Legislature, however, are irrelevant to this Court's analysis. *See supra*, ¶ 3.

196. Defendants do not dispute that some supporters of voter ID were concerned with voting by non-citizens.

197. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute this fact, which is irrelevant. Plaintiffs cite no evidence that Representative Smith's bill was motivated by racial animus. The Fifth Circuit has rejected the notion that support for policies with legitimate objectives can be evidence of racial animus simply because *opponents* of such policies, like Plaintiffs, speculate that those polices are the product of racial animus. *Veasey*, 830 F.3d at 233-34 & n.16; *see supra*, ¶ 45.

198. Defendants do not dispute that some supporters of voter ID were concerned with voting by non-citizens.

199. Defendants do not dispute that some supporters of voter ID were concerned with voting by non-citizens.

200. Plaintiffs' recitation of the facts is misleading. The Legislature did not know or anticipate that S.B. 14 would have a negative impact on legitimate voters, much less that it would disproportionately harm minority voters. To the extent it had evidence of S.B. 14's likely impact, the Legislature had reason to believe that it would not prevent any person from voting. The evidence shows that the Texas Legislature

relied on multiple studies and the experiences of other States to conclude that S.B. 14 would *not* disparately impact minorities:

- Democrats conceded that there was no evidence before the Legislature suggesting that S.B. 14 would have a disparate impact on minorities. *See* DEF0001 (Tex. Leg., Senate Committee of the Whole, 82d Leg., R.S., at 28 (Jan. 26, 2011) (ROA.70215)).

- The Texas Legislature considered real-world empirical studies—as opposed to statistical estimates—showing that requiring voters to prove their identity with a photo ID did not negatively affect the ability those entitled to vote to do so. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibits 7, 9, and 10 (Mar. 10, 2009) (ROA.73369, 73417, 73423)); Fraser Dep. 72:9-21, 74:13-22 (ROA.63039, 63041).

- The Legislature learned from Plaintiff's own expert, Dr. Ansolabehere, that "exclusions from voting" resulting from Voter ID laws "are exceptionally rare." DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S. Exhibit 9, at 124 (Mar. 11, 2009) (ROA.73420) (citing Stephen Ansolabehere, Access Versus Integrity in Voter Identification Requirements, Working Paper No. 58 in the Caltech/MIT Voting Technology Project (Feb. 2007)).

- The Texas Legislature also learned that similar voter ID laws did not result in disenfranchisement as the opponents of those laws—just like opponents of S.B. 14—predicted. *See, e.g.*, DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibits 23, 25, and 28 (Mar. 10, 2009) (ROA.73665, 73685, 73703)).

- The Elections Division Director for the Secretary of State of Georgia testified that in the 16 elections that Georgia had held since implementing its voter ID law his office has never received a single complaint that anyone was disenfranchised or turned away from the polls because they lacked photo ID. DEF0001 (Tex. Leg., House Committee on Elections, 81st Leg., R.S., vol. II, at 364:1-365:8 (Apr. 6, 2009) (ROA.74975-76)). He also testified that, despite four years of federal lawsuits, no single individual had alleged that he was substantially burdened by Georgia's voter ID law. *Id.* 367:21-24 (ROA.74978).

- The Indiana Secretary of State testified that "[i]n the five years and eight statewide primary general elections" that he's "been involved with" since the passage of Indiana's voter ID law, "there's been scant evidence of disenfranchisement or discrimination in Indiana." DEF0001 (Tex.

Leg., Senate Committee of the Whole, 82d Leg., R.S., at 272:9-12 (Jan. 25, 2011) (ROA.69000)).

- The Texas Legislature also received evidence that passing a voter identification law could increase participation in the electoral process by enhancing public confidence in elections. Trial Tr. 397:25-398:8 (Sept. 10, 2014) (Fraser) (ROA.101159-60); DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., Exhibit 7, at 2 (Mar. 10, 2009) (ROA.73372)) (concluding that it is "plausible that photo identification requirements actually increase voter turnout").

Plaintiffs' own expert witness testified that, at worst, there is no "consensus regarding the effects of voter ID laws." Trial Tr. 328:8-10 (Sept. 4, 2014) (Burden) (ROA.99560).

The Legislature's decision not to give greater weight to speculation by opponents who had proved themselves willing to thwart voter-ID legislation by any means necessary does not suggest that the Legislature harbored a discriminatory purpose.

Finally, Plaintiffs' suggestion that Lt. Gov. Dewhurst received a matching analysis from the Secretary of State is mistaken. Although someone in the Secretary of State's office may have communicated an estimate of the number of Texas voters who did not have a Texas driver license or personal ID to a member of Lt. Gov. Dewhurst's staff, there is no evidence that a full analysis was provided, and that same person warned that the estimate was unreliable because the Secretary of State's office was having problems matching the list of driver's licenses to the list of registered voters. *See* Trial Tr. 72:13-73:2 (Sept. 10, 2014) (Dewhurst) (ROA.100834-35). In any event, Plaintiffs concede that no matching analysis relating to race was performed by the Secretary of State's office until long after the passage of S.B. 14. *See* Pls.' Proposed Findings of Fact ¶ 103.

201. Defendants do not dispute that opponents of voter ID complained that even bills that would have allowed multiple forms of non-photo ID would disparately impact minorities. Nonetheless, the Texas Legislature had significant contrary evidence and was entitled to credit and rely on that evidence. *See supra*, ¶ 200.

202. Defendants do not dispute that Senator Fraser made that observation, but he did so in commenting that that number was not helpful because "a great many of those now have a photo ID people." DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 70:16-72:12 (March 10, 2009) (ROA.72237-39). In any event, the Texas Legislature had no evidence concerning the racial makeup of those who registered to vote without listing a driver's license number.

Plaintiffs' reliance on Representative Smith's post-hoc estimate is misguided. There is no evidence that any other legislator received this estimate. Representative Smith testified that he "probably would have mentioned it in committee hearings" (Trial Tr. 329:7-8 (Sept. 8, 2014) (ROA.100323)), but Plaintiffs have never pointed to a transcript evidencing such a mention and Defendants have been unable to locate one. The Fifth Circuit has cautioned against relying on isolated ambiguous statements made by legislators after the enactment of a law. *See Veasey*, 830 F.3d at 234. Moreover, this estimate says nothing about the racial makeup of the group of voters supposed to lack driver's licenses. Although Representative Smith years later suggested that it was "common sense" that minorities would be more likely to be in this group than whites, this "stray statement[] made by [a single] legislator[] voting for S.B. 14" is "not . . . the best indicia of the Texas Legislature's intent." *Veasey*, 830 F.3d at 234, 236; *cf. United States v. O'Brien*, 391 U.S. 367, 384 (1968) ("What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guess-

work."); *Florida v. United States*, 885 F. Supp. 2d 299, 354-55 (D.D.C. 2012) (per curiam) (holding that single legislator's statement, during floor debate, "that it should be harder to vote—as it is 'in Africa'" was "not enough to suggest that his purpose, whatever it was, represented the purpose of the Florida legislature as a whole"); *Castaneda-Gonzalez v. Immigration & Naturalization Serv.*, 564 F.2d 417, 424 (D.C. Cir. 1977) ("Statements by individual legislators should generally be given little weight when searching for the intent of the entire legislative body."). And it turned out Representative Smith's "common sense" was incorrect: Plaintiffs' numbers suggest that those lacking S.B. 14 ID are at least as likely (if not more) to be white rather than Hispanic or African-American. *See* Defendants' Proposed Findings of Fact ¶¶ 219-220.

203. Defendants do not dispute that this witness so testified. The Texas Legislature, however, heard significant evidence that voter ID laws do not disparately impact minorities, and it was entitled to credit and rely on that evidence. *See supra*, ¶ 200.

204. Plaintiffs' recitation of the facts is misleading. There is no evidence that Senator Estes was "concern[ed] that SB 14 was not compliant with Voting Rights Act." Plaintiffs' Proposed Findings of Fact ¶ 204. As Bryan Hebert explained, it is at least as likely that Senator Estes was simply performing his due diligence, "want[ing] to make sure" that S.B. 14 "passe[d] and [was] precleared." Hebert 2014 Dep. 110:2-5 (ROA.61396). Moreover, this "stray statement[] made by [a single] legislator[] voting for S.B. 14" is "not . . . the best indicia of the Texas Legislature's intent." *Veasey*, 830 F.3d at 234. In any event, because preclearance requires that voting laws not have a retrogressive effect on minorities' ability to vote, any concern that Senator Estes had about preclearance would be evidence that he intended for S.B. 14 *not* to disparately impact minorities.

205. Defendants do not dispute that these opponents of voter ID so stated. The Texas Legislature, however, heard significant evidence that voter ID laws do not disparately impact minorities, and it was entitled to credit and rely on that evidence. *See supra*, ¶ 200. According to the 2010 Census, 98.52% of the Texas population lives within 25 miles of a DPS driver's license office, PL 394 at 2 (ROA.39770), and 99.87% of the Texas population lives within 50 miles of a DPS driver's license office, *id.* at 3 (ROA.39771). Speculation by opponents of S.B. 14 is not evidence, and there is no evidence that any voter has been required to travel 175 to 200 miles to reach a DPS office or that such a requirement, if it exists, has prevented any voter from obtaining ID or casting a ballot. Moreover, the Texas Legislature intended for the relevant agencies to address access issues during implementation (*see* Defendants' Proposed Findings of Fact ¶¶ 169-171), which, in fact, occurred (*see id.* ¶¶ 24-34).

206. Defendants do not dispute that these opponents of voter ID so stated. The Texas Legislature, however, heard significant evidence that voter ID laws do not disparately impact minorities, and it was entitled to credit and rely on that evidence. *See supra*, ¶ 200. Moreover, the Texas Legislature intended for the relevant agencies to address access issues during implementation (*see* Defendants' Proposed Findings of Fact ¶¶ 169-171), which, in fact, occurred (*see id.* ¶¶ 24-34).

207. Defendants do not dispute that these opponents of voter ID so stated. The Texas Legislature, however, heard significant evidence that voter ID laws do not disparately impact minorities, and it was entitled to credit and rely on that evidence. *See supra*, ¶ 200. Moreover, the Texas Legislature intended for the relevant agencies to address access issues during implementation (*see* Defendants' Proposed Findings of Fact ¶¶ 169-171), which, in fact, occurred (*see id.* ¶¶ 24-34).

208. Plaintiffs' recitation of the facts is mistaken. Senator Fraser never "questioned the notion that SB 14 should not aim to be unduly restrictive while preventing voter fraud." Pls.' Proposed Findings of Fact ¶ 208. In the colloquy cited by Plaintiffs, it is clear that Senator Fraser was not entirely sure what Senator West was asking, so rather than agree with Senator West, Senator Fraser assured Senator West that the intent behind S.B. 14 was to allow for the use of the "most readily available" "type of [photo] identification" and that Senator Fraser believed the types of identification set forth in S.B. 14 were the "easiest" to acquire. DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 168:1-169:7 (Jan. 25, 2011) (ROA.68974-75). The full colloquy directly refutes Plaintiffs' suggestion.

209. Defendants do not dispute that Representative Smith so stated years after the Texas Legislature passed S.B. 14. Plaintiffs' reliance on this statement by Representative Smith, however, is misguided for the reasons explained above, in paragraph 202.

For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that it is easier to acquire certain non-photo ID as compared to photo ID. Non-photo ID, however, is necessarily less secure than photo ID. Republicans sought for years to compromise their desire for security to accommodate Democrats' concerns regarding photo ID. *See* Defendants' Proposed Findings of Fact ¶¶ 112-148. When it became clear that Democrats were not interested in compromising, Republicans focused on maximizing security while assuring eligible voters could continue to vote. *See id.* ¶¶ 151, 182-183, 207.

210. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that Bryan Hebert believed that it was "doubtful" that the "Obama DOJ" would preclear S.B. 14. PL272 (ROA.38985). But "context matters." *Veasey*, 830 F.3d at 237. First, Hebert made clear that his belief that the "Obama DOJ" was unlikely to preclear S.B. 14 was based on his observation that the administration was "aggressively interpreting and enforcing the Voting Rights Act through preclearance and didn't seem to particularly like Texas," not a belief that S.B. 14 would disparately impact minorities. Hebert 2014 Dep. 169:14-20 (ROA.63927) ("my reasoning was that the Obama DOJ had been aggressively interpreting and enforcing the Vot[ing] Rights Act through preclearance and didn't seem to particularly like Texas"). Second, there is no evidence that Hebert shared his view with legislators (*see id.* 170:9-17), so in no event could his view have affected their conclusion that S.B. 14 would not have disparate impact on minorities. Third, Hebert was commenting on the initial version of S.B. 14, prior to the adoption of various ameliorative provisions. *See* PL272 (email dated Jan. 22, 2011) (ROA.38985); Defendants' Proposed Findings of Fact ¶¶ 168, 195.

The other Hebert email cited by Plaintiffs contains the unremarkable proposition that a law that allows non-photo ID places less of a burden on voters in general and therefore has less of a "*chance*" of burdening minorities. PL205 (ROA.38397) (emphasis added). This is not the same, however, as suggesting that the exclusion of non-photo IDs *will* disproportionately burden minorities. In fact, the law that he was comparing was Georgia's photo-ID-only law, which DOJ concluded did *not* disproportionately burden minorities. *Id.* The idea being that if a law imposes even less of a burden than that law, it will certainly be precleared.

211. Defendants do not dispute that some effort is necessary to obtain an EIC. Plaintiffs ignore, however, that the Texas Legislature intended that issues of access to ID would be addressed in implementing S.B. 14 (*see id.* ¶¶ 169-171), and that such issues were, indeed, addressed during implementation (*see id.* ¶¶ 24-34).

212. Defendants do not dispute that some effort is necessary to obtain an EIC. Plaintiffs ignore, however, that the Texas Legislature intended that issues of access to ID would be addressed in implementing S.B. 14 (*see id.* ¶¶ 169-171), and that such issues were, indeed, addressed during implementation (*see id.* ¶¶ 24-34).

213. Plaintiffs' recitation of the facts is misleading. Although early in the implementation of S.B. 14, DPS requested fingerprints from EIC applicants because that was the process for other IDs, it quickly abandoned that practice. *See, e.g.*, Trial Tr. 282:1-19 (McGeehan) (Sept. 8, 2014) (ROA.100276); *id.* 217:4-23 (Rodriguez) (Sept. 9, 2014) (ROA.100570). This is further evidence that the implementation of S.B. 14 was focused on limiting any potential negative impact of the law on eligible voters.

214. Defendants do not dispute that, in 2007—the year referred to in the evidence cited by Plaintiffs—Republicans supported tightening voter ID requirements and that opponents claimed that requiring voters to identify themselves would reduce turnout among the poor and the elderly.

215. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute that a single legislative staff member so testified. But, as Plaintiffs later concede, these facts had little effect on their ability to collect direct evidence because many legislators "seldom use email for substantive discussions." Pls.' Proposed Findings of Fact ¶ 217.

216. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants dispute that there existed emails concerning S.B. 14 that were later deleted. Plaintiffs offer no evidence that this is the case. Defendants do not dispute that among the thousands of pages of documents produced to Plaintiffs were emails from Senator Fraser and Representative Harless concerning S.B. 14.

217. Defendants do not dispute that it is not likely that that there existed emails concerning S.B. 14 that were later deleted.

218. Defendants do not dispute that all participants in the debate over voter ID, including opponents, were aware that statements made during that debate could be used in legal proceedings. *See* Defendants' Proposed Findings of Fact ¶ 99. Defendants also do not dispute that Senator Fraser believed, as the Supreme Court does, that the Voting Rights Act, as it provided in 2012, had outlived its useful life. *See Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013). To the extent that Plaintiffs are attempting to use Senator Fraser's widely held policy belief as evidence of racial animus, they are misguided. The Fifth Circuit has rejected the notion that support for policies with legitimate objectives can be evidence of racial animus simply because *opponents* of such policies, like Plaintiffs, speculate that those polices are the product of racial animus. *Veasey*, 830 F.3d at 233-34 & n.16; *see supra*, ¶ 45.

219. Defendants do not dispute that S.B. 14 required voters to prove their identity in order to vote with a photo ID. Defendants dispute Plaintiffs' implication that Texas already required voters to prove their identity in order to vote with a photo ID. As Plaintiffs themselves concede, "[p]rior to the enactment of SB 14, the State of Texas did not require photo ID to vote in person." Pls.' Proposed Findings of Fact ¶ 58.

220. Plaintiffs' recitation of the facts is misleading. Senator Fraser was not dismissive. Although Senator Fraser did advise Senator Uresti to direct certain questions to the Secretary of State, he did so because the Secretary of State was going to be testifying—and did, in fact, testify—before the Committee of the Whole. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 435:16-491:13 (Jan. 25, 2011) (ROA.69041-55).

221. Defendants do not dispute that no studies had been conducted on the effect of S.B. 14, which was not even law yet. Defendants do, however, dispute Plaintiffs' implication that S.B. 14 was not modeled on Indiana and Georgia's voter ID laws, which had, respectively, been approved by the Supreme Court and precleared by DOJ. The evidence is clear that S.B. 14 was so modeled. *See* Defendants' Proposed Findings of Fact ¶¶ 73-76, 151.

222. Defendants do not dispute that no studies had been conducted on the effect of S.B. 14, which was not even law yet. As Democrats conceded, they had no evidence that S.B. 14 would disparately impact minorities. *See supra*, ¶ 200. Moreover, there was significant evidence in the legislative record at the time Senator Ellis posed his question showing that requiring voters to prove their identities via photo ID does not disparately impact minorities. *See id.*

223. Defendants do not dispute that public opinion polls and the experiences of other states that required photo ID to vote supported the conclusion that S.B. 14 would not disparately impact minorities. There was significant additional evidence in the legislative record at the time Senator West posed his question showing that requiring voters to prove their identities via photo ID does not disparately impact minorities. *See id.*

224. Defendants do not dispute that in the 2011 debate over voter ID, Senator Fraser was not able to answer every question opponents posed. But "context matters." *Veasey*, 830 F.3d at 237. By 2011, voter ID had been under consideration for *six years*, with thousands of pages of debate, testimony, and evidence having already been considered. *See* Defendants' Proposed Findings of Fact ¶ 96. Democrats conceded that they were well prepared to debate S.B. 14 based upon the years of debate that preceded. *See id.* ¶ 159.

225. Plaintiffs' recitation of the facts is misleading. None of the evidence cited by Plaintiffs documents a Republican legislator invoking forms of fraud other than in-person voter fraud. Dr. Burden's report cites a press release by the Attorney General's office and a reference to registration fraud by a *Democrat*. *See* PL758 ¶¶ 93-96 (Burden Corr. Rep.) (ROA.43950-51).[2] And the other piece of evidence cited by Plaintiffs is the same press release by the Attorney General's office cited by Dr. Burden. *See* PL689 (ROA.42358).

Plaintiffs reference to Bryan Hebert's statement "that fraud exists generally in the system" (Pls.' Proposed Findings of Fact ¶ 225 (quoting PL275 (ROA.38994)) is also misleading. Proponents of S.B. 14 repeatedly referred publicly to the need to prevent in-person voter fraud and increase public confidence in elections. *See* Defendants' Proposed Findings of Fact ¶¶ 205-207. Referring to fraud in the system generally is appropriate when considered in the context of Texas's ongoing effort to address all weaknesses in the election system. *See id.* ¶ 112. It is also appropriate because evidence that one form of fraud occurs is a legitimate indication that other forms of fraud may also be occurring. *See Crawford*, 553 U.S. at 195-96 (instances of absentee ballot fraud support need for voter ID bill because they "demonstrate that not only is

[2] This is yet another example of why this Court should be wary of Plaintiffs' references to their own experts' reports as support for purported historical facts.

the risk of voter fraud real but that it could affect the outcome of a close election"). In addition, requiring voters to identify themselves with a photo ID *can* reduce the effectiveness of registration fraud. *See* Defendants' Proposed Findings of Fact ¶ 246. Finally, if a "stray statement[] made by [a single] legislator[] voting for S.B. 14" is "not . . . the best indicia of the Texas Legislature's intent" (*Veasey*, 830 F.3d at 234), *a fortiori*, a stray statement by a *staffer* is not strong evidence either.

Defendants do not dispute that it is difficult to determine the exact incidence of in-person voter fraud in Texas. Nonetheless, the Texas Legislature's concern about in-person voter fraud was fully justified. *See supra*, ¶ 136.

226. Defendants do not dispute that in the 2011 debate over voter ID, Representative Harless was not able to comprehensively answer every question opponents posed. But "context matters." *Veasey*, 830 F.3d at 237. By 2011, voter ID had been under consideration for *six years*, with thousands of pages of debate, testimony, and evidence having already been considered. *See* Defendants' Proposed Findings of Fact ¶ 96. Democrats conceded that they were well prepared to debate S.B. 14 based upon the years of debate that preceded. *See id.* ¶ 159.

227. Defendants do not dispute that the Texas Legislature was unaware in 2011 of "the number of voters who lack approved photo ID and the percentage of these voters who are African-American or Hispanic." Pls.' Proposed Findings of Fact ¶ 227; *see also supra* ¶¶ 100, 108-109.

228. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Evidence that one form of fraud occurs, however, is a legitimate indication that other forms of fraud may also be occurring. *See Crawford*, 553

U.S. at 195-96 (instances of absentee ballot fraud support need for voter ID bill because they "demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election").

229. This proposed finding is not supported by the cited source. In the cited portion of the transcript, Representative Aliseda acknowledged his personal belief that non-citizen voting is "not a big problem." Section 5 Trial Tr. 12:18 (Aliseda) (July 9, 2012 P.M. Session) (ROA.89697) As Defendants have shown, however, S.B. 14 can reduce the incidence of non-citizen voting. *See* Defendants' Proposed Findings of Fact ¶¶ 269-274.

230. Defendants do not dispute that Representative Aliseda mistakenly referred to committee testimony when he was, in fact, remembering something said to him "in preparation for" debate on S.B. 14. Section 5 Trial Tr. 22:8-12 (Aliseda) (July 9, 2012 P.M. Session) (ROA.89707). In any event, the Texas Legislature had before it significant evidence of voter fraud. *See supra*, ¶ 136.

231. Plaintiffs' recitation of the facts is misleading. The point Representative Aliseda was conveying was that photo ID is necessary for numerous daily activities. This undisputed fact is supported by Plaintiffs' own testimony (*see* Defendants' Proposed Findings of Fact ¶ 40 n.6) and is undisputed. As the Carter-Baker Commission noted, "Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check." Carter-Baker Commission Report at 18 (ROA.77850).

232. Plaintiffs' recitation of the facts is misleading. Plaintiffs' generalization rests on misconstrued evidence, the selective citation to innocent misstatements, and the fact that individual legislators are not founts of encyclopedic knowledge. *See supra*, ¶¶ 218-231. Plaintiffs ignore that by the time S.B. 14 was finally enacted, the issue of voter ID had been under consideration for *six years*, resulting in *more than 4,500*

pages of transcripts and hundreds of pages of exhibits and written testimony. *See* DEF0001-02 (ROA.68878-77825) (legislative histories of S.B. 14, S.B. 362, H.B. 218, and H.B. 1706). Few laws have received more deliberation. And on the specific topic of the "impact on minority voters" (Pls.' Proposed Findings of Fact ¶ 232), the Texas Legislature considered a significant amount of evidence in coming to the conclusion that requiring voters to identify themselves would not disparately impact minorities. *See supra*, ¶ 200.

233. Plaintiffs' recitation of the facts is misleading. Plaintiffs ignore that by the time S.B. 14 was finally enacted, the issue of voter ID had been under consideration for *six years*, resulting in *more than 4,500 pages* of transcripts and hundreds of pages of exhibits and written testimony. *See* DEF0001-02 (ROA.68878-77825) (legislative histories of S.B. 14, S.B. 362, H.B. 218, and H.B. 1706).

234. Defendants do not dispute that many Democratic amendments were rejected. Defendants also do not dispute that, years later, Senator Patrick could not give specific reasons why particular amendments were rejected. But Plaintiffs ignore that Republicans *did* explain why amendments were rejected *at the time they were rejected*. *See* Defendants' Proposed Findings of Fact ¶¶ 165-174. Plaintiffs also ignore that Democrats, who were never going to support any voter ID bill, offered amendments they knew would fail solely in order to build a favorable record for this lawsuit. *See* Trial Tr. 172:7 (Sept. 5, 2014) (Ellis) (ROA.99789) (acknowledging that amendments were offered just to "make a point"), 203:10-21 (ROA.99820) (discussing email from Ellis's Chief of Staff referring to plan to use the expected vote against an Ellis amendment in future legal proceedings against S.B. 14); *see also* DEF0001 (Debate on S.B. 362 in the Senate Committee of the Whole, 81st Leg., R.S., 102:21-22 (March 10, 2009) (ROA.72269)) (Democratic Senator Zaffirini suggesting that those who oppose voter ID were "making a record . . . because a lawsuit is expected"). Finally,

Plaintiffs' focus on amendments only highlights the fact that many ameliorative amendments by Democrats *were* adopted. *See* Defendants' Proposed Findings of Fact ¶ 168. If S.B. 14 proponents were rejecting Democratic amendments in an effort to discriminate, there is no plausible explanation for their decision to adopt or incorporate Democratic amendments that, among other things, expanded the categories of acceptable IDs, provided for the acceptance of expired IDs, and would have allowed an indigency exception to the ID requirement—had Democrats not later objected to and criticized this exception.

235. Plaintiffs' recitation of the facts is misleading. Plaintiffs ignore that Republican legislators explained that they were worried that increasing the variety of IDs would lead to confusion at the polls. *See* Defendants' Proposed Findings of Fact ¶ 173. Plaintiffs also ignore that amendments concerning DPS operations and the fees for documents were rejected because the traditional practice in Texas is to leave issues of implementation to the agencies under the oversight of the Legislature. *See id.* ¶¶ 169-171; *see also id.* ¶ 25 (explaining that DPS hours were extended and fees for documents were reduced). Finally, Plaintiffs ignore that Republicans had legitimate reasons to reject the amendment cited by Plaintiffs that would have required the Secretary of State to study the impact of S.B. 14. *See id.* ¶ 172.

236. Defendants do not dispute that many Democratic amendments were rejected. Plaintiffs' focus on amendments only highlights the fact that many ameliorative amendments by Democrats *were* adopted. *See supra*, ¶ 234.

237. Defendants do not dispute that, years later, Representative Harless could not give specific explanations why particular amendments were opposed. But Plaintiffs ignore that Republicans *did* explain why amendments were rejected *at the time they were rejected*. *See* Defendants' Proposed Findings of Fact ¶¶ 165-174.

238. Defendants do not dispute that Representative Anchia so testified. Plaintiffs' "reliance on post-enactment speculation by opponents of SB 14," however, is "misplaced." *Veasey*, 830 F.3d at 233. In any event, Representative Anchia's speculation is belied by various Democratic amendments that Republicans *did* adopt. *See supra*, ¶ 234.

239. Defendants do not dispute that Senator Ellis's amendment was rejected. Republicans legitimately believed that issue of fees for documents should be addressed by expert agencies during implementation of S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 169-171. And during implementation, fees were reduced. *See id.* ¶ __.

240. Defendants do not dispute that Senator Davis's amendment was rejected. Republicans legitimately believed that the issue of fees for documents should be addressed by expert agencies during implementation of S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 169-171. And during implementation, fees were reduced. *See id.* ¶ 25. Moreover, S.B. 14, as enacted, provided for a "photo ID at no additional cost." Pls.' Proposed Findings of Fact ¶ 240; *see* Defendants' Proposed Findings of Fact ¶ 10-11.

241. Plaintiffs' recitation of the facts is mistaken. Senator Davis's amendment to accommodate voters whose names differed slightly between their ID and voter registration was adopted unanimously. DEF0001 (S.J. of Tex., 82d Leg., R.S. 139 (Jan. 26, 2011) (ROA.70141)).

242. Defendants do not dispute that Senator Gallegos's amendment was rejected. Republicans legitimately believed that the issue of DPS operations should be addressed by expert agencies during implementation of S.B. 14. *See* Defendants' Pro-

posed Findings of Fact ¶¶ 169-171. And during implementation, DPS hours were extended and mobile EIC units were made available to assist those who had trouble reaching DPS offices. *See id.* ¶¶ 26-33.

243. Defendants do not dispute that Republican Senators unanimously approved an amendment inserting an indigency exception into S.B. 14, thus confirming that they did not intend to unnecessarily burden poor voters. Plaintiffs are incorrect, however, that this provision "was stripped from SB 14 in the conference committee." Pls.' Proposed Findings of Fact ¶ 243. This provision was removed from S.B. 14 in the House at the insistence of *Democrats* and with Democratic support. *See* Defendants' Proposed Findings of Fact ¶ 184. With the indigency exception removed, the Conference Committee sought to ensure that S.B. 14 did not unnecessarily burden poor voters by adding in the EIC provision. *See id.* ¶ 195.

244. Defendants do not dispute that these amendments were rejected. Republicans legitimately believed that issues of DPS operations and fees for documents should be addressed by expert agencies during implementation of S.B. 14. *See id.* ¶¶ 169-171. And during implementation, mobile EIC units were made available to assist those who might have trouble reaching DPS offices, and fees for documents were reduced. *See id.* ¶¶ 24-33.

245. Defendants do not dispute that certain amendments seeking to expand the category of acceptable IDs were rejected. Republicans legitimately believed that increasing the variety of IDs would lead to confusion at the polls. *See* Defendants' Proposed Findings of Fact ¶¶ 173-174.

246. Defendants do not dispute that certain amendments seeking to expand the category of acceptable IDs were rejected. Republicans legitimately believed that in-

creasing the variety of IDs would lead to confusion at the polls. *See* Defendants' Proposed Findings of Fact ¶¶ 173-174. This concern was particularly legitimate with respect to student IDs, which are issued by a large number of institutions, which are not standardized, which may not include an address, and which are much less secure than the forms of ID accepted under S.B. 14.

Plaintiffs have offered no evidence that the Texas Legislature was aware that "African-American and Hispanic Texans possess student IDs from public institutions at significantly higher rates than Anglo Texans." Pls.' Proposed Findings of Fact ¶ 246; *see* Defendants' Proposed Conclusion of Law ¶ 132. Accordingly, this fact is irrelevant. *See supra*, ¶ 122.

247. Defendants do not dispute that the Senate unanimously approved an amendment offered by a Democratic legislator to add handgun licenses to the list of acceptable IDs in S.B. 14. *See* Defendants' Proposed Findings of Fact ¶ 168. Plaintiffs seek to have it both ways: opposing Democratic amendments is evidence of racially discriminatory purpose, and supporting Democratic amendments is *also* evidence of racially discriminatory purpose. These two contradictory propositions cannot both be right (in fact, they are both *wrong*). In any event, Plaintiffs offer no evidence that Texas handgun licenses pose the same risk of confusion as the other IDs Democrats sought to add. The Legislature's approval was reasonable since handgun licenses look very similar to other forms of DPS-issued identification and are at least as secure. *Cf.* Tex. Bus. & Com. Code § 506.001(a) (establishing that Texas handgun licenses are acceptable identification in Texas for "access to goods, services, or facilities").

248. Plaintiffs' recitation of the facts is misleading. Although Defendants do not dispute that certain amendments seeking to expand the category of acceptable IDs were rejected in order to reduce confusion at the polls, Plaintiffs offer no evidence

that the Texas Legislature was aware that "African-American and Hispanic Texans are more likely than Anglo Texans to possess" such IDs. Pls.' Proposed Findings of Fact ¶ 248; *see* Defendants' Proposed Conclusion of Law ¶ 132. Accordingly, this fact is irrelevant. *See supra*, ¶ 122. Plaintiffs have offered no evidence that individuals who possess other federal, state, or local photo IDs (or even student IDs) do not also possess a form of S.B. 14 ID, that they are somehow not able to obtain it, or that any such person has been prevented from voting by the lack of an S.B. 14 ID or the inability to reasonably obtain it.

Defendants do not dispute that they rejected an amendment that would have allowed persons to vote without a photo ID.

Although Defendants do not dispute that they rejected an amendment to allow the use of certain expired IDs, Plaintiffs ignore that Republicans *did* adopt an amendment to accept other expired IDs. *See* Defendants' Proposed Findings of Fact ¶ 168.

249. Defendants do not dispute that they rejected an amendment that would have allowed persons to vote without a photo ID.

250. Defendants do not dispute that, years later, Speaker Straus could not give specific explanations why particular amendments were opposed. Failure to prove the wisdom or correctness of a legislative judgment is not evidence of racially discriminatory purpose. In any case, it is clear from the legislative record that amendments seeking to expand the kinds of IDs were rejected for legitimate reasons. *See id.* ¶¶ 173-174.

251. Defendants do not dispute that the Texas Legislature was not aware of any analysis of the potential impact of S.B. 14, specifically. The Texas Legislature did, however, have significant evidence before it showing that requiring voters to prove

their identity with photo ID does not disparately impact minorities. *See supra*, ¶ 200. As Plaintiffs' own expert witnesses conceded, there is no conclusive answer to the question of the effect of voter ID laws. *See* Trial Tr. 328:8-10 (Sept. 4, 2014) (Burden) (ROA.99560); *See* DEF0022 (Robert S. Erikson & Lorraine C. Minnite, Modeling Problems in the Voter Identification-Voter Turnout Debate, 8 Election Law Journal 85, 98 (2009)) (ROA.78232). The Texas Legislature was entitled to credit the significant evidence before it and conclude that requiring voters to prove their identity with photo ID does not disparately impact minorities.

252. Plaintiffs' recitation of the facts is misleading. Defendants do not dispute that Republicans opposed Senator Ellis' amendment to require the Secretary of State to annually review the effect of S.B. 14. Republicans opposed this amendment because they legitimately believed that the better course was for the Legislature to examine the impact of S.B. 14 after it had been in place for a couple of years, and then consider whether to place this annual mandate on the Secretary of State. DEF00001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 29 (Jan. 26, 2011)) (ROA.70215). In any event, the study requested was not feasible given the data held by the Secretary of State (*see* Shorter Dep. 78:2-80:22 (ROA.62351); Dewhurst Dep. 193:2-7 (ROA.60401) ("I didn't feel like, at that point, knowing that they [were] having problems marrying the databases and knowing that there was a continuing problem with—with accessing the data, that it would be worth the time spent, since I didn't believe it was going to be at that point in time in 2011 productive.")), and such a study was inevitably going to be required anyway in order to achieve preclearance under Section 5 of the Voting Rights Act (Trial Tr. 203:16-20 (Sept. 5, 2014) (Ellis) (ROA.99820)). In fact, such a study was completed during the preclearance process. *See* Pls.' Proposed Findings of Fact ¶ 103.

253. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 252.

254. Plaintiffs' recitation of the facts is misleading for the reasons stated above in paragraph 252.

255. Defendants do not dispute that the final version of S.B. 14 left the details of voter education to the State's expert agency on the topic, the Secretary of State.

256. Defendants do not dispute that S.B. 14 provided $2 million for voter education, split between research and advertising.

257. Defendants do not dispute that S.B. 14 provided $2 million only for voter education. The Secretary of State trains election workers on a regular basis without special funding, and such training occurred. *See, e.g.*, Trial Tr. 161:3-6 (Sept. 9, 2014) (Peters) (ROA.100514); *id.* 210:25-211:11 (Rodriguez) (ROA.100563-64); *id.* 324:21-327:13 (Farinelli) (ROA.100677-80); *id.* 321:3-323:25 (Sept. 10, 2014) (Ingram) (ROA.10183-85).

258. Plaintiffs' recitation of the facts is misleading.

First, The Secretary of State trains election workers on a regular basis without special funding, and such training occurred. *See, e.g.*, Trial Tr. 161:3-6 (Sept. 9, 2014) (Peters) (ROA.100514); *id.* 211:25-212:11 (Rodriguez) (ROA.100563-64); *id.* 324:21-327:13 (Farinelli) (ROA.100677-80); *id.* 321:3-323:25 (Sept. 10, 2014) (Ingram) (ROA.10183-85).

Second, the Secretary of State did not testify, as Plaintiffs imply, that the "average costs for education programs related to less consequential changes than SB 14 was $3 million." Pls.' Proposed Findings of Fact ¶ 258. What the Secretary of State

said was that her agency engages in voter outreach and election-worker training every election cycle, and each cycle it spends, on average, $3 million doing so. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 437:1-6, 440:5-18 (Jan. 25, 2011) (ROA.69042)). The Secretary of State further testified that training and outreach related to S.B. 14 would be folded into that regular effort. *See id.* 438:23-439:8, 441:10-24 (ROA.69042-43). As a result, because there was going to be training and education anyway, the Secretary of State testified that it was likely that her agency would not even "need 2 million just for the voter ID" education. *Id.* 441:15-18. (ROA.69043).

Plaintiffs also ignore that the Secretary of State testified that, beyond the $2 million that S.B. 14 directed the Secretary of State to spend on voter education, there was an additional $3 to $5 million in federal funds that Texas had with which to educate voters and train election workers. *See id.* 439:16-44:10 (ROA.69042-43)).

259. The speculation of voter ID opponents is not helpful to this Court's analysis. *See Veasey*, 830 F.3d at 233. The Secretary of State, who is far more versed on this topic than Senator Gallegos, told the Texas Legislature that it was likely that her agency would not even "need 2 million just for the voter ID" education, given the regular efforts that it makes each election cycle. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 441:15-18. (Jan. 25, 2011) (ROA.69043)).

260. Defendants do not dispute that S.B. 14 provided $2 million only for voter education. Plaintiffs have offered no evidence that any voter in the State was unable to obtain ID or that any county was not able to conduct an election as a result of insufficient funding.

261. Defendants do not dispute that S.B. 14 provided $2 million only for voter education. Plaintiffs have offered no evidence that any voter in the State was unable to obtain ID as a result of insufficient funding.

262. Defendants do not dispute that this Court and the Fifth Circuit concluded that S.B. 14 had a discriminatory effect on the right to vote on account of race, under Section 2 of the Voting Rights Act. Defendants continue to challenge that conclusion. *See* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016).

In any event, that conclusion does not support the allegation that the Texas Legislature was acting with a discriminatory purpose when it enacted S.B. 14. This is is because the effects conclusion was based on statistical studies done *after* the enactment of S.B. 14, estimating racial disparities in possession of S.B. 14-compliant identification. The Texas Legislature, however, was not presented evidence of this disparity before it passed S.B. 14. It therefore has no bearing on whether the Texas Legislature had a discriminatory purpose in enacting S.B. 14, particularly in light of the Legislature's belief to the contrary based on empirical studies. *See Feeney*, 442 U.S. at 278-79 (analyzing whether disparate impact was intentional only *after* determining that the legislature was, in fact, aware that such an impact would result). In fact, the Texas Legislature received expert testimony that warned against relying upon the very same database-matching technique employed by Plaintiffs' experts in predicting racial disparities regarding preexisting ID possession. Dr. Toby Moore, the former geographer of the voting section of the Civil Rights Division of the DOJ and a project manager for the Carter-Baker Commission on Election Reform, explained:

> There have been kind of three approaches to trying to identify those without IDs and to determine their demographics. The first approach has been to try to match between data bases, between voter registration databases and Department of Motor Vehicle databases, for example. That has generally not proven to be successful. Those databases are very

> difficult to match between. There is some interesting information to come out of those attempts. But in general, *I would encourage you to avoid any kind of database matching to arrive at your information*.

DEF0001 (Tex. Leg., Senate Committee of the Whole, 81st Leg., R.S., at 338:17-339:2 (Mar. 10, 2009) (ROA.72516-17) (emphasis added)). Even if that technique was accepted in subsequent judicial proceedings, the Legislature's reticence to rely upon any such technique when empirical studies showed that voter ID laws did not produce a disparate impact on minorities does not show any discriminatory purpose.

Moreover, even if Plaintiffs' matching studies had been available to the Texas Legislature, those studies would have shown that more non-Hispanic white voters lacked S.B. 14-eligible IDs than African-American and Hispanic voters combined. *See* Defendants' Proposed Findings of Fact ¶¶ 219-220. Assuming that the rate of ID possession provides a relevant measure of S.B. 14's impact, this fact forecloses a discriminatory-purpose finding under binding Supreme Court precedent: "Too many" white voters "are affected by" S.B. 14 "to permit the inference that the statute is but a pretext for" discrimination. *Feeney*, 442 U.S. at 275. In *Feeney*, the Court stated that the challenged law could not be explained as a pretext for preferring men over women because significant numbers of those disadvantaged by the law were men. *Id.* The same holds here: S.B. 14's photo ID requirement cannot be explained as a pretext for harming minorities compared to whites because, according to Plaintiffs, hundreds of thousands of white registered voters—by some estimates, more than similarly situated African-Americans and Hispanics *combined*—were also negatively impacted by S.B. 14. *See Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 553 (3d Cir. 2011) (rejecting claim of discriminatory purpose where minorities and whites were both adversely affected by the policy at issue). To put it another way, Plaintiffs can "no more successfully claim that" S.B. 14 "denied them equal protection than could

white [voters] who also" lacked S.B. 14 ID. *Washington v. Davis*, 426 U.S. 229, 246 (1976).

263. Defendants do not dispute that this Court and the Fifth Circuit concluded that S.B. 14 had a discriminatory effect on the right to vote on account of race, under Section 2 of the Voting Rights Act. But this conclusion does not support the claim currently before the Court for reasons set forth in paragraph 262 above. *See also* Defendants' Proposed Conclusions of Law ¶¶ 44-54. It is also inaccurate to characterize every voter who lacked an S.B. 14 ID as "disenfranchised." *See* Defs' Proposed Conclusions of Law ¶ 48.

264. Defendants do not dispute that this Court and the Fifth Circuit concluded that S.B. 14 had a discriminatory effect on the right to vote on account of race, under Section 2 of the Voting Rights Act. But this conclusion does not support the claim currently before the Court for reasons set forth in paragraph 262 above. *See also* Defendants' Proposed Conclusions of Law ¶¶ 44-54.

265. Defendants do not dispute that this Court and the Fifth Circuit concluded that S.B. 14 had a discriminatory effect on the right to vote on account of race, under Section 2 of the Voting Rights Act. But this conclusion does not support the claim currently before the Court for reasons set forth in paragraph 262 above. *See also* Defendants' Proposed Conclusions of Law ¶¶ 44-54.

266. Defendants do not dispute that this Court and the Fifth Circuit concluded that S.B. 14 had a discriminatory effect on the right to vote on account of race, under Section 2 of the Voting Rights Act. But this conclusion does not support the claim currently before the Court for reasons set forth in paragraph 262 above. *See also* Defendants' Proposed Conclusions of Law ¶¶ 44-54.

267. The evidence does not support this proposed finding of fact. Plaintiffs have not proven that S.B. 14 caused African-American, Hispanic voters, or impoverished voters to enjoy less opportunity or an unequal opportunity to participate in the political process. Despite their unprecedented access to privileged legislative materials, Plaintiffs have no evidence that any member of the Texas Legislature, let alone the body as a whole, intended or expected S.B. 14 to have that result. The record shows that the Texas Legislature reasonably relied on evidence before it to conclude that S.B. 14 would not have any discriminatory impact on minority voters. The evidence of purported discriminatory impact offered by Plaintiffs in this litigation was not before the Legislature when it enacted S.B. 14, and even if it had been, it would not have supported the conclusion that S.B. 14 would deprive minority voters of an equal opportunity to vote. Only by assuming the worst and ignoring the evidence can Plaintiffs allege that the Texas Legislature deliberately set out to diminish the electoral opportunities available to minority voters. *See supra* ¶ 262; Defendants' Proposed Conclusions of Law ¶¶ 44-54.

268. Defendants do not dispute that Dr. Ansolabehere so found. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See* Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54.

269. Defendants do not dispute that Dr. Ansolabehere so found. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See* Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54. The statement that disparities in ID possession "are statisti-

cally significant and highly unlikely to have arisen by chance" is a non-sequitur. Defendants have never asserted that rates of ID possession are determined by chance—photo IDs are not randomly distributed. And Plaintiffs cannot support the implicit assumption that rates of ID possession, or any other statistic, should be expected to reflect a perfectly equal distribution among all social or economic categories. *Cf., e.g.*, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 n.15 (1977) ("In many instances, to recognize the limited probative value of disproportionate impact is merely to acknowledge the heterogeneity of the Nation's population.") (internal quotation marks omitted). Rates of ID possession do not imply disenfranchisement, and there is no evidence that the Legislature selected particular forms of ID to include in S.B. 14 because it intended—even in part—to burden African-American or Hispanic voters.

270. Defendants do not dispute that Dr. Ansolabehere so found. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See* Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54.

271. Defendants do not dispute that other Plaintiffs' experts agreed with Dr. Ansolabehere. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See* Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54.

272. Defendants do not dispute that Dr. Ansolabehere so found. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See*

Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54.

273. Defendants do not dispute that Dr. Ansolabehere so found. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See* Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54.

274. Defendants do not dispute that the statistics listed reflect Dr. Ansolabehere's findings. But this analysis was not before the Texas Legislature, which had, in any event, been warned against reliance on the type of database matching analysis used by Dr. Ansolabehere. *See* Defendants' Proposed Findings of Fact ¶¶ 217-218; Defendants' Proposed Conclusions of Law ¶¶ 44-54. It is misleading, however, to state that "the share of African-American voters and Hispanic voters who must obtain SB 14 ID to cast a ballot that will be counted is between three to four times as high" as the share of Anglo voters. Dr. Ansolabehere's data indicate that of the 376,985 registered voters he identified, 166,220 are Anglo, 121,312 are Hispanic, and 82,525 are African-American. Improperly dividing percentages masks the fact, as found by Dr. Ansolabehere, that more white registered voters than either African-American or Hispanic registered voters did not have an S.B. 14, did not qualify to vote by mail, and did not qualify for a disability exemption. Even if the Texas Legislature had considered these findings, they would not support an inference that it deliberately set out to disadvantage African-American or Hispanic voters. By Plaintiffs' logic, the same data would support an inference that the Legislature deliberately set out to disadvantage Anglo voters in favor of "Other" voters, only 1.4% (6,928) of whom fell into the same category.

275. Defendants do not dispute that Drs. Barreto and Sanchez so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

276. Defendants do not dispute that Drs. Barreto and Sanchez so found, but the proposed finding is incomplete. Drs. Barreto and Sanchez also found that approximately 395,000 white voters in Texas lacked S.B. 14 ID. Baretto-Sanchez Report, Appx. A tbl.1 (ROA.43605). But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

277. Defendants do not dispute that Drs. Barreto and Sanchez so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

278. Defendants do not dispute that Plaintiffs' experts so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

279. Defendants do not dispute that Drs. Barreto and Sanchez so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

280. Defendants do not dispute that Drs. Barreto and Sanchez so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

281. Defendants do not dispute that Drs. Barreto and Sanchez so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

282. Defendants do not dispute that Dr. Webster so found. But these analyses were not before the Texas Legislature and are, therefore, irrelevant to this Court's analysis. *See supra*, ¶ 262.

283. Defendants do not dispute that these witness so testified at trial. Nonetheless, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

284. Defendants do not dispute that these plaintiffs/witness so testified at depositions and at a trial. Nonetheless, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. Indeed, each of these plaintiffs/witnesses can vote notwithstanding S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 39-44.

285. Defendants do not dispute that Dr. Henrici so testified. But Dr. Henrici's view was not only *not* before the legislature at the time it considered S.B. 14, it was rebutted by the testimony of a *plaintiff*, Floyd Carrier, who testified that he had been trying to obtain ID since before S.B. 14 in order to handle his personal finances. *See* Trial Tr. 88:17-21 (Sept. 2, 2014) (F. Carrier) (ROA.98720).

286. Defendants do not dispute that these plaintiffs/witness so testified at depositions and at a trial. The testimony does not establish, however, that Ms. Bingham or Mr. Estrada (or any other voter) cannot get an S.B. 14 ID. Ms. Bingham had an S.B. 14 ID, Bingham Dep. 37:9-10 (ROA.97456), and the proposed finding does not allege that she could not have obtained an ID other than a driver's license in the past. Mr. Estrada conceded on cross-examination that he could obtain a personal ID card. Es-

trada testified that he had held a commercial driver's license with a hazmat endorsement since 1997. Trial Tr. 137:4-12 (Sept. 4, 2014) (Estrada) (ROA.99369). To maintain his hazmat endorsement, Estrada had to verify his citizenship or residency with the Transportation Security Administration, which he did by presenting a birth certificate and baptismal papers, most recently in 2011. *Id.* at 137:13-138:2 (ROA.99369-70). He testified that he obtained his birth certificate from the Karnes County courthouse, which is about six miles from his home, and which is also where the Karnes County elections office is located. *Id.* at 138:3-22. To maintain his commercial driver's license, Mr. Estrada had to pay fees of up to $100 over the years. *Id.* at 139:8-16 (ROA.99371). His commercial driver's license expired in January, 2013. *Id.* at 140:11-14 (ROA.99372). To renew it, he had to pay surcharges resulting from a ticket for failure to carry insurance. *Id.* at 135:4-19 (ROA.99367). He was aware that he could obtain a personal identification card from the DPS for $16, he was interested in obtaining one, and he confirmed that he could afford the fee. *Id.* at 142:8-143:13 (ROA.99374-75). These witnesses indicate that socioeconomic conditions do not necessarily correlate with lack of S.B. 14 ID. In any event, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. Indeed, each of these plaintiffs/witnesses can vote notwithstanding S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 39-44.

287. Plaintiffs' view was not shared by the Texas Legislature, which was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. The record does not support the proposed finding that obtaining S.B. 14 ID imposes a general burden on any segment of the population, much less that it burdens

minority voters on account of race. Plaintiffs have identified various "general impediments" that could impose a burden in particular circumstances. But they have not proven that those general impediments "establish the material burden of S.B. 14" on voters who lack ID, nor have they proven that those general impediments "increase the degree to which the impact is discriminatory, due to the greater likelihood that Hispanic and African-American Texans lack resources needed to overcome these impediments." At most, Plaintiffs have outlined a theory that certain factors might combine to impose a burden on individual voters, and that those factors might impose a particular burden on Hispanic and African-American voters because they are more likely to lack resources to overcome them. According to that theory, the requirements of S.B. 14 (or any voting requirement that imposes a greater marginal burden on economically disadvantaged voters) will interact with "general impediments" to impose a general burden on African-American and Hispanic voters who lack ID, thereby abridging or denying their right to vote. But they have not proven their theory. They have not established that S.B. 14 has had or will have a general impact on any group of voters. To the extent they have attempted to prove it, their theory does not stand up to the evidence—it indicates that Hispanic and African-American voters who lack ID are no less able to obtain it than similarly situated white voters. *See, e.g.*, ¶ 337, *infra*.

288. Defendants do not dispute that Drs. Burden and Burton so found regarding the "calculus of voting" approach, nor do Defendants dispute the general proposition that monetary and non-monetary costs may, at some point, reduce the likelihood that voters will participate. But Defendants dispute, and the evidence does not show, that socioeconomic disparities across racial groups make "minority voters . . . particularly unlikely to overcome the impediment" allegedly created by SB 14. *See supra* ¶ 287.

The view reflected in the proposed finding, moreover, is directly contrary to the evidence received and credited by the Texas Legislature, showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. The view of the Texas Legislature was confirmed by the results of elections following implementation of S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 45-51.

289. Defendants do not dispute that these plaintiffs/witness so testified at depositions and at a trial, but Plaintiffs' recitation of the facts is misleading. The Supreme Court in *Crawford* concluded that "[f]or most voters who need them, the inconvenience of making a trip to [a government office], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 553 U.S. at 198. That Plaintiffs have been able to find a handful of voters for whom the burdens may be more severe than average does not support a finding that "[o]btaining SB 14 ID imposes substantial difficulties and burdens" on voters. Pls.' Proposed Findings of Fact ¶ 289. The Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. Indeed, each of these plaintiffs/witnesses can vote notwithstanding S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 39-44.

290. Defendants do not dispute that Dr. Jewell so found. Nonetheless, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. Indeed, each of these plaintiffs/witnesses can vote notwithstanding S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 39-44. This is consistent with the results of elections held following implementation of S.B. 14,

which showed that S.B. 14 had a negligible impact on voting. *See id.* ¶¶ 45-51. The difficulties faced by these carefully selected individuals—most of whom could vote by mail without ID—are not evidence of "the total cost associated with SB 14," Pls.' Proposed Findings of Fact ¶ 290. *Crawford*, 553 U.S. at 198 ("For most voters who need them, the inconvenience of making a trip to [a government office], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting."); *cf. Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 631 (6th Cir. 2016) ("Zeroing in on the abnormal burden experienced by a small group of voters is problematic at best, and prohibited at worst."). Moreover, Plaintiffs ignore that S.B. 14 provided for a free EIC, and did not specify what documents would be necessary for the EIC or their cost. See Trial Tr. 282:1-6 (Sept. 8, 2014) (McGeehan) (ROA.100276). During implementation of S.B. 14, the agencies with that responsibility lowered the cost significantly. See Defendants' Proposed Findings of Fact ¶ 25.

291. Defendants do not dispute that Ms. White so testified. Nonetheless, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. The bare statement that "many" low-income individuals cannot obtain ID without assistance does not provide any indication how severe the burden is, how many people it affects, and what kind of assistance they require. Whatever they may be, those burdens affect voters on account of their low-income status, not their race—there is no evidence that the cited burdens affect low-income minority voters more severely than they affect low-income white voters. Plaintiffs' focus on the testimony of a single worker at a homeless shelter only highlights the fact that, despite crisscrossing the State, they could not produce a single homeless person who intended to vote but was unable to cast a ballot. *See* Defendants' Proposed

Findings of Fact ¶ 38. In addition, the Supreme Court in *Crawford* concluded that "[f]or most voters who need them, the inconvenience of making a trip to [a government office], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 553 U.S. at 198. Finally, Plaintiffs ignore that S.B. 14 provided for a free EIC, and did not specify what documents would be necessary for the EIC or their cost. See Trial Tr. 282:1-6 (Sept. 8, 2014) (McGeehan) (ROA.100276). During implementation of S.B. 14, the agencies with that responsibility lowered the cost significantly. See Defendants' Proposed Findings of Fact ¶ 25.

292. Defendants do not dispute that Ms. White so testified, but her testimony does not indicate a disparate impact on minority voters. The proposed finding does not state what percentage, if any, of the individuals seeking assistance are minorities. Nor does it state that individuals seeking assistance obtaining ID do so because they need ID to vote. Plaintiffs' statement regarding the typical cost to assist a client is not specific enough to formulate a response, as it does not indicate what "the entire process" entails, how long it lasts, or what services are provided. The Supreme Court in *Crawford* concluded that "[f]or most voters who need them, the inconvenience of making a trip to [a government office], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 553 U.S. at 198. The Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

293. Defendants do not dispute that Ms. Mora so testified, but Defendants dispute Plaintiffs' characterization of the cost of obtaining an S.B. 14 ID. The Supreme Court in *Crawford* concluded that "[f]or most voters who need them, the inconvenience of

making a trip to [a government office], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." 553 U.S. at 198. The Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. The burdens faced by homeless individuals who seek services from organizations such as the Stewpot do not fairly represent the usual burdens of voting for any individual. Homeless individuals who seek assistance from the Stewpot in obtaining identification do so because identification is frequently required to receive other services, such as residency in a homeless shelter. Trial Tr. 137:15-22 (Sept. 3, 2014) (Mora) (ROA.99069). Plaintiffs' focus on the aggregate population of homeless individuals served by the Stewpot only highlights their failure to identify a single homeless person who intended to vote but was unable to cast a ballot. Ms. Mora testified that a DOJ attorney visited the Stewpot and offered to speak to "anybody who was a registered voter and had the intention to be able to vote and was experiencing difficulties and was not able to due to not having a Texas I.D. or acceptable form of identification." *Id.* at 144:24-145:2 (ROA.99076-77). Ms. Mora testified that there were "[l]ess than five" takers, *id.* at 145:6 (ROA.99077), and Plaintiffs have not identified any of them as individuals who intended to vote but were prevented from doing so because they could not obtain S.B. 14 ID.

294. Plaintiffs' proposed finding is not supported by the evidence cited. Dr. Henrici never testified that low-income minorities face more numerous or more severe impediments to obtaining photo ID than similarly situated low-income white voters. Defendants do not dispute that low-income individuals face burdens on account of their socioeconomic status, but there is no evidence to support a finding that those burdens are imposed on account of race. The Texas Legislature was entitled to rely on the

substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

295. Defendants do not dispute that Drs. Chatman and Henrici so found or that low-income Texans face certain burdens on account of their socioeconomic status, but those burdens do not establish a disparate impact on account of race. The Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

296. Plaintiffs' proposed finding is not supported by the evidence. Defendants do not dispute that poorer Texans may face burdens not faced by Texans of greater means. Nor do Defendants dispute the relative rates of poverty in particular segments of the Texas population. It does not follow, however, that "Hispanics and African-Americans who do not already possess . . . photo ID face greater burdens in obtaining S.B. 14 ID than Anglo voters" (Plaintiffs' FoF ¶ 296). There is no evidence that Hispanic and African-American voters who do not already have an acceptable form of ID face greater burdens in obtaining S.B. 14 ID than Anglo voters who do not already have an acceptable form of ID. The Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

297. Defendants do not dispute that Drs. Burton and Henrici so found or that Texans who live in poverty experience certain burdens on account of poverty that Texans of greater means either do not face or find it easier to overcome. The general propositions in Plaintiffs' proposed finding, however, do not tend to prove or disprove any claim about the purpose or effect of S.B. 14.

298. Defendants do not dispute that Dr. Henrici so found or that Texans who live in poverty experience certain burdens on account of poverty that Texans of greater means either do not face or find it easier to overcome. The general propositions in Plaintiffs' proposed finding, however, do not tend to prove or disprove any claim about the purpose or effect of S.B. 14.

299. Defendants do not dispute that Dr. Henrici so found or that Texans who live in poverty experience certain burdens on account of poverty that Texans of greater means either do not face or find it easier to overcome. The general propositions in Plaintiffs' proposed finding, however, do not tend to prove or disprove any claim about the purpose or effect of S.B. 14.

300. Defendants do not dispute that Dr. Henrici so found or that Texans who live in poverty experience certain burdens on account of poverty that Texans of greater means either do not face or find it easier to overcome. Nor do Defendants dispute the general proposition that "[m]any low-income Hispanic and African-American families" experience difficulties related to housing. But Defendants dispute that low-income voters of other races or ethnicities do not face similar difficulties. The general propositions in Plaintiffs' proposed finding do not tend to prove or disprove any claim about the purpose or effect of S.B. 14.

301. Plaintiffs' proposed finding is not supported by the cited sources. Defendants do not dispute the general proposition that low-income individuals disproportionally suffer from health problems or that Dr. Henrici so testified. The cited evidence does not support the proposition that Hispanic and African-American Texans generally suffer disproportionally from health impairments, difficulty managing family members' disabilities, or inability to obtain and maintain documents. The cited sources

support the proposition that low-income Texans disproportionately face these difficulties; they do not support the proposition that Hispanic and African-American Texans disproportionately face these difficulties compared to similarly situated Texans of other races or ethnicities. To the extent these burdens fall on low-income minority Texans, there is no support in the cited sources for the proposition that the same burdens do not fall equally on other low-income Texans. Defendants'

302. Defendants do not dispute that Dr. Henrici so stated in her report, but the cited trial testimony is limited to the general stigma associated with poverty. Nonetheless, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

303. Defendants do not dispute that Dr. Henrici so found. Nonetheless, the Texas Legislature was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

304. Defendants do not dispute that Ms. White and Ms. Mora so testified or that individuals who are homeless or extremely impoverished face burdens on account of their circumstances or socioeconomic status that individuals in better circumstances or with greater means either do not face or find it easier to overcome. Nor do Defendants dispute the relative rates of poverty in particular segments of the Texas population. It does not follow, however, that the burdens of homelessness or extreme poverty are imposed on account of race, and the general propositions in Plaintiffs' proposed finding does not tend to prove or disprove any claim about the purpose or effect of S.B. 14. The Texas Legislature was entitled to rely on the substantial evidence before

it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

305. Defendants dispute this proposed finding. Plaintiffs have not proven that S.B. 14 "eliminates the ability of a disproportionate number of Hispanic and African-American voters to cast a ballot that will be counted" or that it "disproportionately diminishes the opportunity" to do so. To the extent S.B. 14 imposes any burden on account of socioeconomic disadvantage, that burden is not imposed on account of race. Plaintiffs' view was not shared by the Texas Legislature, which was entitled to rely on the substantial evidence before it that showed that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200.

306. Plaintiffs' view was not shared by the Texas Legislature, which included in SB 14 readily available ID that the Legislature concluded would "be the easiest to use." *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 168:12-21 (Jan. 25, 2011) (ROA.68974)).

307. Plaintiffs' view was not shared by the Texas Legislature, which included in SB 14 readily available ID that the Legislature concluded would "be the easiest to use." *See id*.

308. Defendants do not dispute that DPS charges fees to obtain certain IDs. This is why S.B. 14 provided for free EICs and why state agencies reduced the cost of documents necessary to obtain an EIC. *See* Defendants' Proposed Findings of Fact ¶ 25; *see also* Trial Tr. 98:14-18 (Sept. 11, 2014) (Williams) (ROA.101283) ("Q: [T]here is no exception in SB 14 for people who are indigent in Texas, correct? A: [T]he Election Identification Certificate is free of charge. That is the exception.").

309. Defendants do not dispute that Dr. Lichtman so testified, but his testimony is based on an unsupported inference. According to Lichtman, an unidentified blogger speculated that surcharges were "a major contributor to Texas' voter ID law being challenged" because it might account for a large number of individuals who lacked a current ID. Trial Tr. 92:1-5 (Sept. 5, 2014) (ROA.99709). After DOJ denied preclearance, one Republican staff member referred to the blog post in a message to another Republican staff member, who responded that "this came up in the debate. Thanks for passing it along." *Id.* at 92:7-8. Lichtman considered this to be "direct evidence" that the Legislature was aware of a "racial impact" from surcharges. *Id.* at 91:12-17 (ROA.99708). But there is no mention of race in the blog post or the communication between two staffers. And Plaintiffs cannot point to anywhere in the legislative debate where the Legislature was informed of the racial makeup of this population. *See* DEF0001 (Debate on S.B. 14 in the Senate Committee of the Whole, 82d Leg., R.S., 197:2-199:6 (Jan. 25, 2011) (discussing the surcharge issue) (ROA.68982)). In addition, Plaintiffs ignore that anyone without a driver's license could obtain an EIC. *See* Defendants' Proposed Findings of Fact ¶¶ 10-11.

310. Plaintiffs are referencing possession rates of certain IDs by minorities. None of the information was before the Texas Legislature when it considered S.B. 14 and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. In any event, the Texas Legislature legitimately concluded that limiting the forms of acceptable ID was necessary to avoid confusion at the polls. *See supra*, ¶ 125. This proposed finding does not specify what types of IDs it refers to, what information they contain, and how they qualify as "secure."

311. Defendants do not dispute that Dr. Lichtman so found, but the assertion that excluding government employee IDs "sharpened the racial impact of S.B. 14" is un-

founded. Even if Plaintiffs had proven a "racial impact," the relative number of African-American and Hispanic voters who have a government employee ID would "sharpen" that impact only if those voters also lacked an S.B. 14 ID. There is no evidence to support that conclusion, and the notion that government employees lack a driver's license or other state-issued identification is not plausible. In any case, Plaintiffs have not proven that S.B. 14 had a "racial impact"; they have provided estimates of the number of people who did not have an S.B. 14 at the time of trial, and they have attempted to show the effect of existing rates of ID possession by identifying a handful of voters, most of whom are elderly and therefore eligible to vote without a photo ID, and none of whom cannot vote because of S.B. 14. Even if rates of ID possession are taken as evidence of "racial impact," the evidence shows that the number of white voters without ID was greater than the number of Hispanic or African-American voters without ID and, by some measures, greater than the combined number of Hispanic and African-American voters without ID. None of the information, however, was before the Texas Legislature when it considered S.B. 14 and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. In any event, the Texas Legislature legitimately concluded that limiting the forms of acceptable ID was necessary to avoid confusion at the polls. *See supra*, ¶ 125.

312. This proposed finding is not supported by the evidence. Plaintiffs have not proven that the choice not to accept student IDs had any impact at all. The only student Plaintiffs have identified chose to get a California driver's license instead of a Texas driver's license. Even on Plaintiffs' theory of "racial impact," excluding student IDs would "sharpen" the alleged racial impact of S.B. 14 only if voters who have a student ID do not also have an S.B. 14 ID, if the voters with a student ID and not an S.B. 14 cannot reasonably obtain an S.B. 14 ID, and if the lack of an S.B. 14 ID prevented those voters from voting, and if the voters who could not vote because of their

inability to obtain an S.B. 14 ID were disproportionately African-American or Hispanic. None of this has been proven by Plaintiffs. And no such information was before the Texas Legislature when it considered S.B. 14, making it irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. In any event, the Texas Legislature legitimately concluded that limiting the forms of acceptable ID was necessary to avoid confusion at the polls. *See supra*, ¶ 125. Unlike the forms of ID accepted under S.B. 14, student IDs are issued by a large number of different institutions, they are not standardized, they may not include an address, and they are much less secure.

313. Plaintiffs' recitation of the facts is misleading. The Senate *unanimously* approved a Democratic legislator's amendment to add handgun licenses to the list of acceptable IDs in S.B. 14. *See* Defendants' Proposed Findings of Fact ¶¶ 168. That amendment was reasonable because a concealed handgun license is at least as secure as other forms of state-issued identification. Plaintiffs seek to have it both ways: opposing Democrats' amendments is evidence of racial animus and supporting Democrats' amendments is also evidence of racial animus. These two contradictory propositions cannot both be right (in fact, they are both wrong). In any event, none of this information was before the Texas Legislature when it considered S.B. 14 and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

314. Defendants do not dispute that fewer persons have the ability to obtain a military ID, a U.S. citizenship certificate, or a U.S. Passport, as compared to a drivers' license, personal ID card, or free EIC.

315. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

316. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

317. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

318. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

319. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The cited report indicates, however, that a substantially greater percentage of registered Hispanic voters (12.2%) than Anglo voters (1.3%) or African-American voters (2.6%) held certificates of citizenship and naturalization. *See* Ansolabehere Corr. Supp. Rep. ¶ 61, tbl.V.2 (ROA.43258-59).

320. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

321. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

322. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

323. Plaintiffs' proposed factual finding rests on a false premise. Contrary to the Plaintiffs' assumption, the Secretary of State had substantial funding to educate voters. *See supra*, ¶ 258.

324. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The evidence shows, however, that the availability of EICs was widely publicized. *See* Defendants' Proposed Findings of Fact ¶ 31.

325. Defendants do not dispute that these plaintiffs/witnesses so testified. The evidence shows, however, that the availability of EICs was widely publicized. *See* Defendants' Proposed Findings of Fact ¶ 31. [redacted] In any event, even assuming that many people had not heard of EICs, Plaintiffs have produced no evidence suggesting that such was the Legislature's intention.

326. Defendants do not dispute that Drs. Barreto and Sanchez so found. The evidence shows, however, that the availability of EICs was widely publicized. *See* Defendants' Proposed Findings of Fact ¶ 31. [redacted] In any event, even assuming that many people had not heard of EICS Plaintiffs have produced no evidence suggesting that such was the Legislature's intention.

327. Plaintiffs do not dispute that Drs. Barreto and Sanchez so found. This analysis was not before the Texas Legislature, however, and is therefore irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. In any event, the Texas Legislature was entitled to rely on the significant evidence before it showing that

requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. [redacted]

328. Plaintiffs' proposed factual finding is unsupported. Plaintiffs point to no evidence that the Secretary of State's voter education efforts each cycle do not reach or target minority voters who are likely to need such education or to officials who could educate voters. The fact that a few people did not know of certain S.B. 14 provisions is not evidence of a deficient education program. In any event, Plaintiffs can point to no evidence that the Texas Legislature intended a deficient voter-education program when it enacted S.B. 14. Indeed, the only evidence on that point suggests that opponents of voter-ID legislation hoped to keep voters ignorant. *See id.* ¶ 34.

329. Defendants do not dispute that Dr. Burton so found. This analysis was not before the Texas Legislature, however, and is therefore irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. In any event, the Texas Legislature was entitled to rely on the significant evidence before it showing that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. Defendants dispute the claim that the process to obtain an EIC is "complex." [redacted]

330. Defendants do not dispute that Mr. Carrier and Ms. Eagleton so testified. Both Mr. Carrier and Ms. Eagleton, however, could have voted by mail. Defendants' Proposed Findings of Fact ¶¶ 39, 43. Mr. Carrier also could have received a disability exemption or renewed his S.B.14-compliant Veterans Administration ID. *Id.* ¶ 40. In

any event, the Texas Legislature was entitled to rely on the significant evidence before it showing that requiring voters to prove their identities with a photo ID does not disparately impact minorities. *See supra*, ¶ 200. [redacted]

331. Defendants do not dispute that final version of S.B. 14 left the details of voter education to the State's expert agency on the topic, the Secretary of State. In any event, Plaintiffs can point to no evidence that the Texas Legislature intended a deficient voter-education program when it enacted S.B. 14. Indeed, the only evidence on that point suggests that opponents of voter-ID legislation hoped to keep voters ignorant. *See id.* ¶ 34.

332. Defendants do not dispute that S.B. 14 was different from S.B. 362. S.B. 14 provided for millions of dollars of voter education and outreach. *See id.* ¶ 21-23. In any event, Plaintiffs can point to no evidence that the Texas Legislature intended a deficient voter-education program when it enacted S.B. 14. Indeed, the only evidence on that point suggests that opponents of voter-ID legislation hoped to keep voters ignorant. *See id.* ¶ 34.

333. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The Secretary of State, however, does have a mandate to educate voters about S.B. 14's provisions. *See id.* ¶ 21. In any event, Plaintiffs can point to no evidence that the Texas Legislature intended a deficient voter-education program when it enacted S.B. 14. Indeed, the only evidence on that point suggests that opponents of voter-ID legislation hoped to keep voters ignorant. *See id.* ¶ 34.

334. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. The Secretary of State, however, does have a mandate and a budget to educate voters about S.B. 14's provisions. *See id.* ¶ 21. In any event, Plaintiffs can point to no evidence that the Texas Legislature intended a deficient voter-education program when it enacted S.B. 14. Indeed, the only evidence on that point suggests that opponents of voter-ID legislation hoped to keep voters ignorant. *See id.* ¶ 34.

335. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs, however, point to no evidence that the Secretary of State's voter education efforts each cycle do not reach or target minority voters who are likely to need such education or to officials who could educate voters. The fact that a few people did not know of certain S.B. 14 provisions is not evidence of a deficient education program. In any event, Plaintiffs can point to no evidence that the Texas Legislature intended a deficient voter-education program when it enacted S.B. 14. Indeed, the only evidence on that point suggests that opponents of voter-ID legislation hoped to keep voters ignorant. *See id.* ¶ 34.

336. Defendants do not dispute that S.B. 14's EIC provision originated in the conference committee as a replacement provision for S.B. 14's indigency exception, which was excised in the House at the urging—and with the support—of Democrats. *See id.* ¶¶ 184, 195. As Plaintiffs concede that the EIC provision was an eleventh-hour addition to the bill, the Court should reject any suggestion that the EIC provision was designed with the intention of burdening minorities. There is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to

replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

337. Defendants do not dispute that Drs. Baretto and Sanchez so found, but Plaintiffs ignore the many efforts made by the State—reducing the cost of documents, deployment of mobile EIC units, expanding DPS hours, etc.—to assure access to IDs for those who sought them. *See id.* ¶¶ 24-33; *see also* Peters Dep. 274:1-2 (ROA.64770) ("The Whole EIC process is constantly being update[d] and improved"). In any event, S.B. 14 did not specify what the process to obtain an EIC would be (Trial Tr. 282:1-6 (Sept. 8, 2014) (McGeehan) (ROA.100276)); accordingly, these issues regarding implementation do not shed light on the Legislature's intent. Likewise, none of this information was before the Legislature when it considered S.B. 14; accordingly, it is irrelevant to this Court's inquiry. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

Had the Baretto-Sanchez study come before the Legislature, it would have provided further support for the conclusion that requiring voters to prove their identities with a photo ID would *not* disparately impact minorities. *See supra*, ¶ 200. The study showed that among eligible voters without an unexpired photo ID, an almost equal percentage of white voters (78.8%) and Latino voters (76.6%) had proof of citizenship; an almost equal percentage of white voters (80.3%) and Latino voters (77.7%) had proof of identification; and a higher percentage of black voters had proof of identification (81.8%) than white or Latino voters. *See* Baretto-Sanchez Report, Appx. A tbl.7 (ROA.43607). Among eligible voters without an unexpired photo ID, a higher percentage of white voters (100%) than black voters (80%) or Latino voters (86.7%) faced at least one problem getting a free ID, *id.* tbl.8; an almost equal percentage of white voters (37.7%), black voters (38.1%), and Latino voters (36.1%) would have a problem using or paying for public transit to get to a DPS office, *id.* tbl.16

(ROA.43609); and a higher percentage of white voters (55.7%) than black voters (45%) or Latino voters (43.4%) would have a problem going to a Texas DPS office on a weekday during normal business hours to obtain an EIC, *id.* tbl.18 (ROA.43610).

338. Plaintiffs' recitation of the facts is misleading. Although DPS—as the State agency with the most expertise in issuing IDs and verifying identity (*see* Peters Dep. 243:4-244:19 (ROA.64762) (describing the thousands of DPS employees involved in issuing IDs and the regular training they receive)—is tasked with issuing EICs, it consults with the Secretary of State on the operation of the program (*see id.* 274:18-275:14 (assistant director of DPS describing being trained by the Secretary of the State's office on the topic of EICs); Trial Tr. 282:11-19 (Sept. 8, 2014) (McGeehan) (discussing consulting with DPS on the EIC process.)) In any event, S.B. 14 did not specify what the process to obtain an EIC would be (Trial Tr. 282:1-6 (Sept. 8, 2014) (McGeehan) (ROA.100276)); accordingly, these issues regarding implementation do not shed light on the Legislature's intent.

339. Plaintiffs' recitation of the facts is misleading, and their vague speculation that unnamed DPS officials have acted "without the purpose of ensuring" availability of EICs has no basis in the evidence. DPS and other agencies have, in fact, taken steps to ensure that voters who need an EIC will be able to obtain one. *See* Defendants' Proposed Findings of Fact ¶¶ 24-33; *see also* Trial Tr. 164:23-165:1 (Sept. 9, 2014) (Peters) ("There is . . . an ongoing effort to keep the public apprised of the availability of EICs and where they can obtain them and when they can obtain them and what they need to obtain one."); Peters Dep. 88:5-13, 94:25-95:4) (ROA.64723, 64725) (noting that efforts are made to reach Spanish-speaking citizens); Defendants' Proposed Findings of Fact ¶ 31. Implementation by agencies after S.B. 14 was enacted does not shed light on the Legislature's purpose, and there is no evidence that the Legislature assigned responsibility to the DPS to undermine the EIC program.

340. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Nonetheless, there have been no "instances in which someone with limited English proficiency wanted to apply for an EIC but was unable to due to the unavailability of a Spanish translation." Rodriguez Dep. 46:9-47:5 (ROA.64885-86). In any event, S.B. 14 did not specify what the process to obtain an EIC would be (Trial Tr. 282:1-6 (Sept. 8, 2014) (McGeehan) (ROA.100276)); accordingly, these issues regarding implementation do not shed light on the Legislature's intent.

341. Plaintiffs' recitation of the facts is misleading, and Plaintiffs suggestion that law enforcement officers will threaten to arrest minority voters for attempting to vote is incredible, and it is not supported by the cited sources. Although law enforcement officers are present at DPS offices because DPS is a law enforcement agency, Plaintiffs have no evidence that any DPS employee has ever attempted to intimidate a voter.

342. Plaintiffs' recitation of the facts is misleading. While discussing EICs, Plaintiffs shift to other forms of ID and suggest that DPS does a warrant check for persons applying for those IDs. This is incorrect. *See* Rodriguez Dep. 94:16-18 (ROA.64933 ("Q: So warrant checks would not be something that the employee could see on the screen? A: We don't have access to that, no."). And DPS does not do any warrant check for EIC applicants:

> Q: Okay. Does DPS do any background checks with the information that is obtained from the EIC application?
>
> . . .
>
> A: No.
>
> Q: Do they check for any outstanding tickets?

A: No.

Q: Do they check against the Texas Criminal Information Center?

A: No.

Q: Against the National Criminal Information Center?

A: No.

. . .

Q: Do they check against the Interagency Border Inspection System?

A: No.

Q: Do they check for warrants?

A: No.

Q: Have they, at any time, checked for warrants?

A: Driver license [customer service representatives] don't have the ability to check for warrants.

Id. 92:13-93:15 (ROA.64931-32).

In any event, S.B. 14 did not specify what the process to obtain an EIC would be (Trial Tr. 282:1-6 (Sept. 8, 2014) (McGeehan) (ROA.100276)); accordingly, these issues regarding implementation do not shed light on the Legislature's intent.

343. DPS does not and cannot perform warrant checks on EIC applicants. *See supra*, ¶ 342. In any event, these issues regarding implementation do not shed light on the Legislature's intent.

344. Defendants do not dispute that, for a short time, DPS collected fingerprints from EIC applicants just as it does for all other ID applicants. Defendants also do not dispute that the Secretary of State, demonstrating its influence over the EIC program, worked to end this practice.

345. Defendants do not dispute that DPS has suspended fingerprinting EIC applicants or that it might do so again in the future. The evidence in the trial record does not support the statement that DPS has not informed the public of its decision not to fingerprint EIC applicants or that it has not posted signs informing EIC applicants that their fingerprints will not be taken. Assuming those facts are true, however, it is not obvious why they would provide that information or why they would be expected to do so. Not one of these proposed findings has anything to do with the Texas Legislature's purpose in enacting S.B. 14.

346. Plaintiffs' recitation of the facts is misleading. The evidence Plaintiffs cite for this proposition is (1) the excluded hearsay testimony of a voter ID opponent (*see* Trial Tr. 364:5-15 (Sept. 4, 2014) (Guzman) (ROA.99596)); (2) the testimony of Ramona Bingham (who has an S.B. 14 ID, ¶ 286, *supra*), which expresses no fear of going to a DPS office (*see* Bingham Dep. 37:9-39:22 (ROA.113602)); and one voter out of millions who thought that he could get arrested for tickets at the DPS (*see* Sanchez Dep. 9:1-11 (ROA.112703)).[3] This evidence is woefully insufficient to establish that minority voters in general "were intimidated or fearful of going to DPS offices." Pls.' Proposed Findings of Fact ¶ 346; *cf. Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631 ("Zeroing in on the abnormal burden experienced by a small group of voters is problematic at best, and prohibited at worst."). Speculation that unidentified individuals may experience anxiety when visiting a DPS office is not evidence, and it cannot support the proposed finding.

347. As already noted above, this Court excluded Guzman's testimony about what voters supposedly told him as hearsay. *See* Trial Tr. 364:5-15 (Sept. 4, 2014) (Guzman) (ROA.99596). And the lone experience of Mr. Sanchez, [redacted]

[3] [redacted]

[redacted] is not evidence that minority voters in general feared the DPS, and it cannot possibly support the proposed finding.

348. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

349. Plaintiffs' recitation of the facts is misleading. The Texas Legislature did not require that EICs be issued only at established DPS offices. During implementation of the law, DPS began using mobile EIC units and other county offices to issue EICs. *See* Defendants' Proposed Findings of Fact ¶¶ 30-31; Pls.' Proposed Findings of Fact ¶ 352. There is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that Voter ID proponents were intent on easing potential burdens on voters of limited means.

350. That Georgia and Mississippi passed particular statutes says nothing about the purpose of the Texas Legislature when it enacted S.B. 14 ID. Plaintiffs ignore that DPS has worked to assure that every county in the state has an office to issue EICs. *See* Defendants' Proposed Findings of Fact ¶¶ 30-31; Pls.' Proposed Findings of Fact ¶ 352. And "[t]he whole EIC process is constantly being up-date[d] and improved." Peters Dep. 274:1-2 (ROA.64770). Plaintiffs have not identified any voter who was or will be prevented from voting because he tried to get an EIC but did not have access to a DPS location in his county.

351. This proposed finding is not accurate, even if it is consistent with facts as they existed at the time of trial, and it does not support Plaintiffs' claim in any event.

Plaintiffs ignore that DPS has worked to assure that every county in the state has an office to issue EICs. *See* Defendants' Proposed Findings of Fact ¶¶ 30-31; Pls.' Proposed Findings of Fact ¶ 352. Plaintiffs have not identified any voter who was or will be prevented from voting because he tried to get an EIC but did not have access to a DPS location in his county.

352. Defendants do not dispute that, as the Legislature expected (*see* Defendants' Proposed Findings of Fact ¶¶ 169-171), the agencies tasked with implementing S.B. 14 would work to ensure that every eligible voter has the opportunity to vote. Contrary to Plaintiffs' proposed finding, accommodations by agencies in the process of implementation are part of the legislative structure of S.B. 14, but their particular success or failure is not relevant to the Legislature's purpose when it enacted the law.

353. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute the general proposition that, like most neighborhoods, many neighborhoods with concentrated minority communities have no DPS office, nor do they dispute that Plaintiffs' experts so wrote or testified. But the experts' opinions and testimony were not before the Legislature and are therefore irrelevant to the question of its purpose. Plaintiffs' proposed finding ignores that DPS dispatches mobile EIC units to wherever they are requested. *See id.* ¶ 30. In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

354. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do

not dispute these facts, but Plaintiffs do not allege that they were before the Legislature, and they are not probative of the Legislature's purpose. Plaintiffs also ignore that DPS dispatches mobile EIC units to wherever they are requested. *See id.* ¶ 30. In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

355. Plaintiffs do not explain what "significant" means, and the use of the qualifying word "permanent" deprives the statement of any meaning. It also raises the question how people who drive in these unspecified areas obtain driver's licenses, which they presumably do, casting further doubt about the significance of the statement. Plaintiffs ignore that DPS dispatches mobile EIC units to wherever they are requested. *See id.* ¶ 30. Plaintiffs also ignore that DPS has worked to assure that every county in the state has an office to issue EICs. *See* Defendants' Proposed Findings of Fact ¶¶ 30-31; Pls.' Proposed Findings of Fact ¶ 352. And "[t]he whole EIC process is constantly being up-date[d] and improved." Peters Dep. 274:1-2 (ROA.64770). Plaintiffs have not identified any voter who was or will be prevented from voting because he tried to get an EIC but did not have access to a DPS location in his county.

356. Defendants do not dispute that Dr. Chatman offered this estimate, but it does not establish that any person in this population does not have an S.B. 14 ID, nor does it say anything about the proportion of registered voters who face a similar travel requirement to reach a DPS office. This estimate also conflicts with the Census data showing that 98.5% of all Texas residents live within 25 miles, and 99.87% live within

50 miles, of a DPS driver's license office. PL 394 at 2-3 (ROA.39770-71). Even if accurate, this estimate identifies a hypothetical burden that cannot support any inference without impermissible speculation. Regardless, none of the information was before the Texas Legislature when it considered S.B. 14 and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

357. Defendants do not dispute that Dr. Chatman offered this opinion, but Defendants dispute the assertion that S.B. 14 places a disproportionate and significant travel burden on Hispanic and African-American eligible voters compared to Anglo eligible voters, and Chatman's opinion does not inform the question before the Court in any case. (If it is intended to be taken literally, it is also completely unfounded—there is no evidence that any voter has traveled more than 90 minutes to obtain an EIC, let alone that 3.3 times more African-American eligible voters and 1.5 times more Hispanic eligible voters have done so than Anglo eligible voters.) Even if accurate, these estimates about voters alleged to face more than 90 minutes of travel to obtain an EIC do nothing more than identify a hypothetical burden that cannot support any inference without impermissible speculation. The statistics prove nothing about S.B. 14 without some evidence connecting them to individual voters, and Plaintiffs offer none. Regardless, none of the information was before the Texas Legislature when it considered S.B. 14 and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

358. Defendants do not dispute that Dr. Chatman offered this opinion, but it does not inform the question before the Court. Even if true, Chatman's estimates do nothing more than identify a hypothetical burden that cannot support any inference without impermissible speculation. The statistics prove nothing about S.B. 14 without some evidence connecting them to individual voters, and Plaintiffs offer none. Regardless, none of the information was before the Texas Legislature when it considered

S.B. 14, however, and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

359. Defendants do not dispute that Dr. Chatman offered this opinion, but it does not inform the question before the Court. Even if true, Chatman's estimates do nothing more than identify a hypothetical burden that cannot support any inference without impermissible speculation. (Assuming they are meant to be taken literally, the proposed findings are completely unfounded—there is no evidence that any voter has traveled more than 90 minutes to obtain an EIC.) The statistics prove nothing about S.B. 14 without some evidence connecting them to individual voters, and Plaintiffs offer none. Regardless, none of the information was before the Texas Legislature when it considered S.B. 14, however, and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

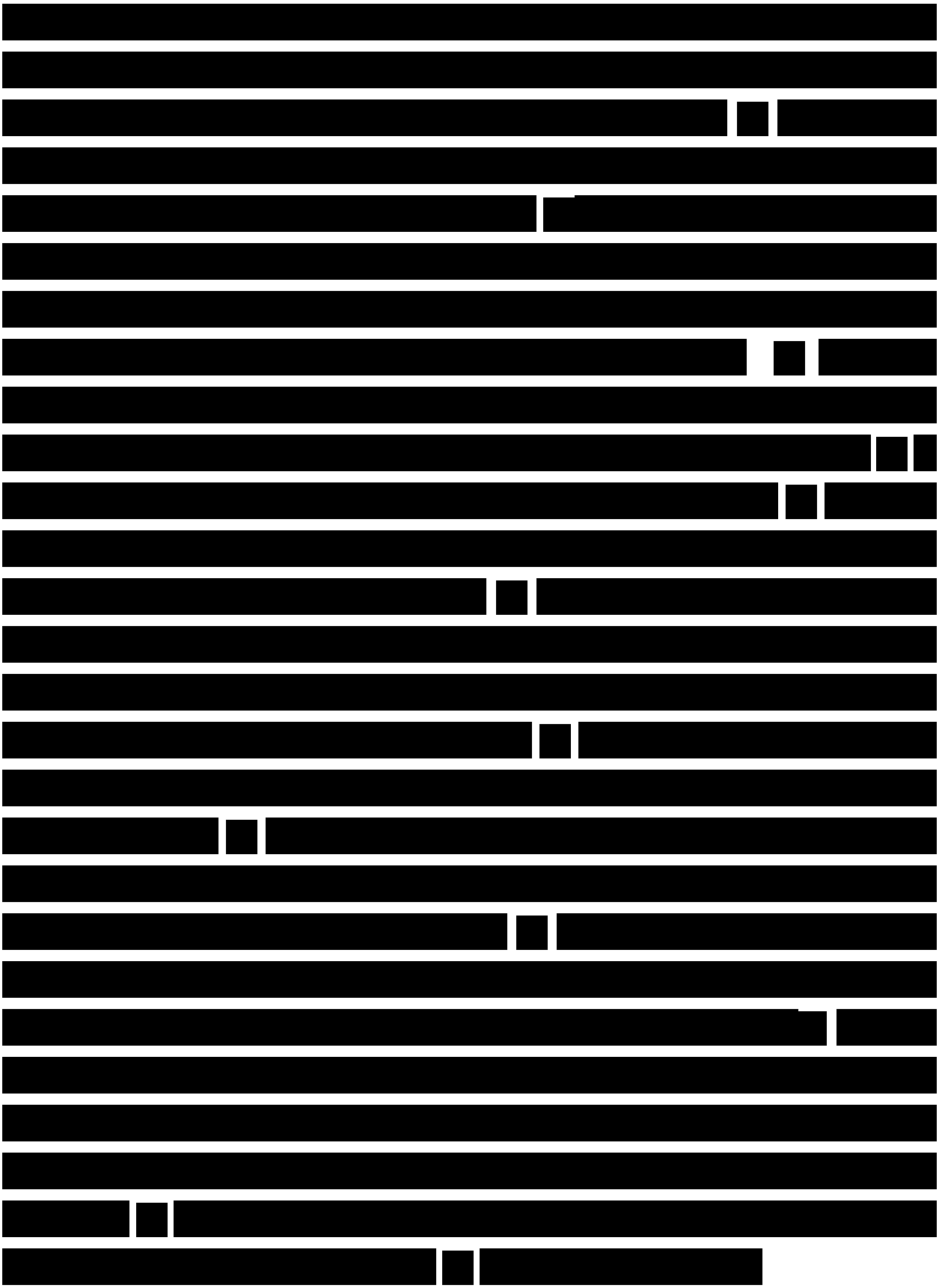
360. Defendants do not dispute that Dr. Chatman offered this opinion, but this vague statement does not inform the question before the Court. Even if true, it proves nothing about S.B. 14, and it is irrelevant to purpose because it was not before the Texas Legislature when it considered S.B. 14. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

361. Defendants do not dispute that Dr. Webster offered this opinion, but it does not inform the question before the Court. Even if true, Webster's estimates do nothing more than identify a hypothetical burden that cannot support any inference without impermissible speculation. (Assuming they are meant to be taken literally, the proposed findings are completely unfounded—there is no evidence that any voter has traveled more than 90 minutes to obtain an EIC.) The statistics prove nothing about S.B. 14 without some evidence connecting them to individual voters, and Plaintiffs offer none. Regardless, none of the information was before the Texas Legislature

when it considered S.B. 14, however, and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

362. Defendants do not dispute that Dr. Webster offered this opinion, but it does not inform the question before the Court. Even if true, Webster's estimates do nothing more than identify a hypothetical burden that cannot support any inference without impermissible speculation. (Assuming they are meant to be taken literally, the proposed findings are completely unfounded—there is no evidence that any voter has traveled more than 90 minutes to obtain an EIC.) The statistics prove nothing about S.B. 14 without some evidence connecting them to individual voters, and Plaintiffs offer none. Regardless, none of the information was before the Texas Legislature when it considered S.B. 14, however, and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

363. Defendants do not dispute that these witnesses so testified, but Mr. Gandy is eligible to vote by mail without S.B. 14 ID and has done so, and Mr. Holmes's testimony indicates that the time he spent traveling to obtain S.B. 14 ID was not necessary. [redacted]



364. Plaintiffs' recitation of the facts is misleading. Plaintiffs ignore that during election season, many DPS offices have extended and Saturday hours. *See* Defendants' Proposed Findings of Fact ¶ 33. In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

365. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that, anticipating an increased demand for identification, the Texas Legislature appropriated significant funds to improve driver's license services. Trial Tr. 92:1-16 (Sept. 11, 2014) (Williams) (ROA.101277). At the time of trial, the Driver's License Division of the DPS had increased its staff by hundreds of employees, and the DPS had opened six new "Mega Centers." Trial Tr. 212:19-213:1 (Sept. 9, 2014) (Rodriguez) (ROA.100565-66). In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

366. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that, anticipating an increased demand for identification, the Texas Legislature appropriated significant funds to improve driver's license services. Trial Tr. 92:1-16 (Sept. 11, 2014) (Williams)

(ROA.101277). At the time of trial, the Driver's License Division of the DPS had increased its staff by hundreds of employees. Trial Tr. 212:19-213:1 (Sept. 9, 2014) (Rodriguez) (ROA.100565-66). In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

367. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that, anticipating an increased demand for identification, the Texas Legislature appropriated significant funds to improve driver's license services. Trial Tr. 92:1-16 (Sept. 11, 2014) (Williams) (ROA.101277). Plaintiffs also ignore that during election season, many DPS offices have extended and Saturday hours. *See* Defendants' Proposed Findings of Fact ¶ 33. At the time of trial, the Driver's License Division of the DPS had increased its staff by hundreds of employees, and the DPS had opened six new "Mega Centers." Trial Tr. 212:19-213:1 (Sept. 9, 2014) (Rodriguez) (ROA.100565-66). In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

368. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

369. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

370. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

371. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that a Texas driver's license or personal ID card that has been expired for more 60 days but for less than two years cannot be used to vote pursuant to S.B. 14, but can be used to obtain an EIC. *See* Pls.'s Proposed Findings of Fact ¶ 371; Defendants' Proposed Findings of Fact ¶ 8. These issues regarding implementation do not shed light on the Legislature's intent.

372. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

373. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that it was the intent of the Texas Legislature that the costs of necessary documents be addressed during implementation of S.B. 14, and that such costs were addressed. *See* Defendants' Proposed Findings of Fact ¶¶ 25, 169-171. Moreover, in 2015, the Texas Legislature enacted S.B. 983—in conformance with its intent to offer free EICs—that prohibited the charging of *any* fee connected with obtaining documents to obtain a free EIC. Act of May 25,

2015, 84th Leg., R.S., ch. 130, 2015 Tex. Gen. Laws 1134. This is further evidence that the Texas Legislature did not intend, through S.B. 14, to burden the poor.

374. Defendants do not dispute that Drs. Baretto and Sanchez so found. None of the information was before the Texas Legislature when it considered S.B. 14, however, and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. Had the report been before the Legislature, however, it would have provided further support for the conclusion that requiring voters to prove their identities with a photo ID would *not* disparately impact minorities. *See supra*, ¶¶ 200, 337.

375. Defendants do not dispute that Drs. Baretto and Sanchez so found. None of the information was before the Texas Legislature when it considered S.B. 14, however, and, therefore, it is irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. Had the report been before the Legislature, however, it would have provided further support for the conclusion that requiring voters to prove their identities with a photo ID would *not* disparately impact minorities. *See supra*, ¶¶ 200, 337.

376. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. This proposed fact supports the Legislature's decision to provide elderly voters the option to vote by mail to eliminate any potential burdens imposed by S.B. 14.

377. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that it was the intent of the Texas

Legislature that the costs of necessary documents be addressed during implementation of S.B. 14, and that such costs were addressed. *See* Defendants' Proposed Findings of Fact ¶¶ 25, 169-171.

378. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that it was the intent of the Texas Legislature that the costs of necessary documents be addressed during implementation of S.B. 14, and that such costs were addressed. *See id.* ¶¶ 25, 169-171.

379. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that it was the intent of the Texas Legislature that the costs of necessary documents be addressed during implementation of S.B. 14, and that such costs were addressed. *See id.* ¶¶ 25, 169-171.

380. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

381. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

382. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that county officials are flexible about the forms of ID they accept for birth certificates. *See, e.g.*, Trial Tr. 136:12-25

(Sept. 3, 2014) (Mora) (ROA.99068) (explaining that clients of the StewPot shelter can use a StewPot-issued ID to obtain a birth certificate at Dallas Vital Stats office).

383. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

384. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

385. Plaintiffs' recitation of the facts is misleading. County officials are flexible about the forms of ID they accept for birth certificates. *See, e.g.*, Trial Tr. 136:12-25 (Sept. 3, 2014) (Mora) (ROA.99068) (explaining that clients of the StewPot shelter can use a StewPot-issued ID to obtain a birth certificate at Dallas Vital Stats office).

386. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs ignore, however, that county officials are flexible about the forms of ID they accept for birth certificates. *See, e.g.*, Trial Tr. 136:12-25 (Sept. 3, 2014) (Mora) (ROA.99068) (explaining that clients of the StewPot shelter can use a StewPot-issued ID to obtain a birth certificate at Dallas Vital Stats office).

387. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts, but these issues regarding implementation do not shed light on the Legislature's intent.

388. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do

not dispute these facts, but these issues regarding implementation do not shed light on the Legislature's intent.

389. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts, but these issues regarding implementation do not shed light on the Legislature's intent.

390. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts, but there is no evidence that issues regarding name disparities, which could reasonably be expected to primarily affect women, impose a heavier burden on minority women than on non-minority women or that the Legislature deliberately set out to discriminate against women by passing S.B. 14.

391. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts, but these issues regarding implementation do not shed light on the Legislature's intent.

392. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

393. Defendants do not dispute that Ms. Bates so testified. But in addition to being able to vote by mail, [redacted]

394. Defendants do not dispute that Ms. Gholar so testified. As Plaintiffs concede, however, Ms. Gholar may vote by mail.

395. Defendants do not dispute that Mr. Taylor so testified. Mr. Taylor, however, may vote by mail and thus did not need to obtain his birth certificate. *See* Trial Tr. 146:7-12 (Sept. 4, 2014) (Taylor) (ROA.99378).

396. Defendants do not dispute that Ms. Barber so testified. Ms. Barber, however, was able to vote by mail. Barber Dep. 14:3-6 (ROA.97471)

397. Plaintiffs' recitation of the facts is misleading. It was the intent of the Texas Legislature that the costs of necessary documents be addressed during implementation of S.B. 14, and such costs were addressed at that time. *See* Defendants' Proposed Findings of Fact ¶¶ 25, 169-171.

398. Defendants do not dispute that EICs are intended to be used as identification only for voting.

399. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

400. Defendants dispute these facts. Documents needed for an EIC are available for much lower cost that than those needed to obtain other ID. *See* Defendants' Proposed Findings of Fact ¶ 25. In addition, local registrars have been trained to issue EIC birth certificates. Trial Tr. 326:21-327:13 (Sept. 9, 2014) (Farinelli) (ROA.100679-80). There are more than 400 local registrars in the State. *Id.* at 318:17-319:8 (ROA.100671-72). These facts directly refute Plaintiffs' assertion, which is based on nothing more than the opinion of one person running a homeless shelter. *Cf. Crawford*, 553 U.S. at 201 (concluding that "depositions of two case managers at a day shelter for homeless persons" did "not provide any concrete evidence of the burden imposed on voters").

401. Defendants do not dispute that the disability exception does not apply widely. Any analysis concerning the rates of disability among different races was not before the Texas Legislature at the time it considered S.B. 14, and is therefore irrelevant. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

402. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

403. Defendants do not dispute that "[a]s of January 15, 2014, only 18 voters had successfully applied for a disability exemption," but this evidence does not support Plaintiffs' claim of intentional racial discrimination.

404. Defendants do not dispute the Ms. Washington and Ms. Bingham so testified. Ms. Bingham, however, had S.B. 14 ID and thus did not need a disability exception. *See* Defendants' Proposed Findings of Fact ¶ 43. And Ms. Washington is able to vote by mail and thus does not need a disability exception. *See id.*

405. Defendants do not dispute that these witnesses so testified. Defendants also do not dispute that the Texas Legislature left the details of voter education to the State's expert agency on the topic, the Secretary of State.

406. Defendants do not dispute that these witnesses so testified.

407. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs, however, have pointed to no voter who could not vote because his or her disability exemption application was not processed in a timely manner.

408. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute this fact.

409. Plaintiffs' recitation of the facts is misleading. Plaintiffs fail to consider that most of the plaintiffs and voter-witnesses in this case who complained about having difficulty obtaining S.B 14-compliant ID were elderly. *See* Defendants' Proposed Findings of Fact ¶¶ 39, 43. Preserving mail-in voting for the elderly goes a long way towards remedying the minimal negative impact Plaintiffs have been able to show in the case. *See id.* In any event, the racial composition of absentee voters was not known to the Texas Legislature when it was considering S.B. 14 and thus is irrelevant to this Court's analysis. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

410. Defendants do not dispute that Drs. Burden and Ansolabehere so found. But this information was not before the Texas Legislature when it was considering S.B. 14 and thus is irrelevant to this Court's analysis. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. Even if it were relevant, if allowing elderly voters to vote by mail without S.B. 14 ID could be taken as evidence that the Legislature intended to benefit elderly Anglo voters, it would necessarily constitute evidence that the Legislature also intended to benefit elderly minority voters such as the individual plaintiffs and witnesses in this case.

411. Defendants do not dispute that Dr. Burden so found. But this information was not before the Texas Legislature when it was considering S.B. 14 and thus is irrelevant to this Court's analysis. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. Even if it were relevant, if allowing absentee voting without S.B.

14 ID could be taken as evidence that the Legislature intended to benefit Anglo absentee voters, it would necessarily constitute evidence that the Legislature also intended to benefit minority absentee voters.

412. Defendants do not dispute that Plaintiffs found three voters who were "unaware that they are eligible" to vote by mail "or that SB 14 does not apply to absentee voting." Pls.' Proposed Findings of Fact ¶ 412. This is not sufficient evidence, however, that "many voters" who are eligible to vote by mail are similarly ignorant. *Id.*

413. Defendants dispute Plaintiffs' contention, which depends on a conception of the right to vote that is unsupported. There is no authority that voters must be able to vote in the precise method that each prefers. *See Crawford*, 553 U.S. at 197-203 (considering the *burden on voting*, not the burden on a voter's preferred method of voting); *McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802 (1969) (upholding a statute allowing some, but not other, citizens to vote absentee). Laws that require voters to cast different kinds of ballots are valid so long as there is "some rational relationship to a legitimate state end." *McDonald*, 394 U.S. at 809; *see also Biener v. Calio*, 361 F.3d 206, 215 (3d Cir. 2004). *cf. Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631 ("Zeroing in on the abnormal burden experienced by a small group of voters is problematic at best, and prohibited at worst."). Indeed, three states—Oregon, Washington and Colorado—conduct voting exclusively by mail. *See* Colo. Rev. Stat. § 1-5-401; Or. Rev. Stat. § 254.465; Wash. Rev. Code § 29A.40. In any event, there is no evidence that the Texas Legislature held the same view as Plaintiffs and sought to burden minorities in this unusual way.

414. Defendants do not dispute that Ms. Bates so testified.

415. Defendants do not dispute that Senator Ellis so testified.

416. Defendants do not dispute that Reverend Johnson so testified.

417. Defendants do not dispute that Dr. Ansolabehere so found. But this information was not before the Texas Legislature when it was considering S.B. 14 and thus is irrelevant to this Court's analysis. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132.

418. Defendants do not dispute that Dr. Ansolabehere so found. But this information was not before the Texas Legislature when it was considering S.B. 14 and thus is irrelevant to this Court's analysis. *See supra*, ¶ 122; Defendants' Proposed Conclusions of Law ¶ 132. Had Dr. Ansolabehere's data been before the Legislature, however, they would have provided further support for the conclusion that S.B. 14 would not have a discriminatory effect on minority voters. They show that among those who voted in 2010 and 2012, S.B. 14's photo-ID requirement would impact more non-Hispanic white voters than African-American and Hispanic voters combined. *See* Defs' Proposed Findings of Fact ¶ 220.

419. Defendants do not dispute that these witnesses so testified. Each of the witnesses, however, could have voted by mail without the need for S.B. 14 ID. *See* Defendants' Proposed Findings of Fact ¶ 43.

420. Defendants dispute Plaintiffs' assertion to the extent it relies on Mr. Guzman's excluded hearsay testimony. *See* Trial Tr. 364:5-15 (Sept. 4, 2014) (Guzman) (ROA.99596). Defendants do not dispute that Ms. Eagleton so testified. Ms. Eagleton, however, could have voted by mail without the need for S.B. 14 ID. *See* Defendants' Proposed Findings of Fact ¶ 43. Defendants do not dispute Mr. Holmes so testified. Mr. Holmes, however, had the documents necessary to obtain an EIC, and his testimony indicates that he either could have gotten it or did not need it to vote. *Id.*; *see also supra* ¶ 363.

421. Defendants do not dispute that these witnesses so testified. Ms. Eagleton and Ms. Washington, however, could have voted by mail without the need for S.B. 14 ID. *See* Defendants' Proposed Findings of Fact ¶ 43. In any event, the testimony of three voters is insufficient to establish the burden placed on thousands of others. *See Crawford*, 553 U.S. at 201-02.

422. Defendants do not dispute that a single voter so testified. This is not sufficient evidence, however, that such occurrences were widespread, *see Crawford*, 553 U.S. at 201-02, or that they imposed a particular burden on minority voters, and the proposed finding does not support Plaintiffs' claim of intentional racial discrimination because there is no evidence that the Texas Legislature intended this to happen to any voter.

423. Defendants do not dispute that only .04 percent of ballots cast in the 2013 constitutional amendment election were rejected because of a lack of S.B. 14 ID. *See* Defendants' Proposed Findings of Fact ¶ 49. There is no reason to believe, or record evidence to support a finding, that these small numbers represent eligible voters turned away, as opposed to the proper rejection of *in*eligible voters. This conforms to other evidence, which showed that reports of voters being unable to present ID or experiencing other problems during the elections in which S.B. 14 was in force were "vanishingly small." Ingram Dep. 53:24-54:2 (ROA.64028).

424. Defendants do not dispute that Dr. Burden offered this opinion. But "[t]he [November 2013] turnout was up substantially over the 2011 turnout." Trial Tr. 335:10-336:1 (Sept. 10, 2014) (Ingram) (ROA.101097-98). And if the effect of S.B. 14 was as dire as Plaintiffs claim, one would still expect something more than the miniscule amount of rejected provisional ballots seen in 2013.

425. Defendants reject Plaintiffs' assertion that persons in Edcouch had problems voting. This assertion is based on the excluded hearsay testimony of Mr. Guzman. *See* Trial Tr. 364:5-15 (Sept. 4, 2014) (Guzman) (ROA.99596). It is also contrary to the report of the Elections Administrator for Hidalgo County, which stated that no provisional ballots in Hidalgo County had been rejected for ID reasons. DEF0014 (ROA.78119) (Feb. 7, 2014 Email from Yvonne Ramón, Elections Administrator for Hidalgo County, to Lindsey Cohan).

426. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute this fact.

427. Plaintiffs' recitation of the facts is misleading. It is true that, at the time of trial, only a few hundred EICs had been issued, but this supports the inference that either (1) there is not much demand for EICs or (2) voters prefer to pay for a State-issued ID card or driver's license, which can be used for more than voting. [redacted]

428. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts.

429. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do

not dispute these facts, but they do not support the claim that the Texas Legislature intentionally discriminated on the basis of race by enacting S.B. 14.

430. For the purposes of the Court's determination as to whether the Texas Legislature acted with discriminatory purpose when it enacted S.B. 14, Defendants do not dispute these facts. Plaintiffs point to no evidence, however, that DPS has been unable to engage in activities that it otherwise would have because of a lack of funding. Plaintiffs also ignore that, anticipating an increased demand for identification, the Texas Legislature appropriated significant funds to improve driver's license services. Trial Tr. 92:1-16 (Sept. 11, 2014) (Williams) (ROA.101277).

431. Defendants do not dispute that it was the intent of the Texas Legislature that the costs of necessary documents be addressed during implementation of S.B. 14, and that such costs were addressed. *See* Defendants' Proposed Findings of Fact ¶¶ 25, 169-171.

432. Plaintiffs' recitation of the facts is misleading. Neither Mr. Peters nor Mr. Farnelli testified that few voters are aware of the existence of EIC birth certificates, let alone opined on a cause of that hypothetical fact. Even assuming that a limited number of EIC birth certificates had been issued at the time of trial, this could indicate that either (1) there is not much demand for EICs or (2) voters prefer to pay for a State-issued ID card or driver's license, which can be used for more than voting. [redacted] In any event, there is no evidence whatsoever that the Texas Legislature's effort to provide a no-cost ID to voters was part of a last-minute plan to make it harder for minorities to vote. The provision of a no-cost ID to replace the indigency exemption

shows that voter ID proponents were intent on easing potential burdens on voters of limited means.

433. Defendants do not dispute that Speaker Straus so testified, but the relevance of this proposed finding is unclear. Texas disputed that S.B. 14 has any racially discriminatory or retrogressive effect (*see* Appellant's Jurisdictional Statement, *Texas v. Holder*, No. 12-1028 (U.S. Feb. 19, 2013)), and continues to contend that S.B. 14 does not have a disparate impact on minorities (*see* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016)). Moreover, the Texas Legislature, relying on academic studies and the experiences of other states, concluded that S.B. 14 would *not* disparately affect minorities. *See* Defendants' Proposed Findings of Fact ¶¶ 207-216. Nonetheless, the Texas Legislature remained open to adjusting the law if future elections demonstrated such a need. *See id.* ¶ 172. But the elections that followed implementation of S.B. 14 only *confirmed* that it would not negatively impact Texas voters, including minorities. *See id.* ¶¶ 45-51. Accordingly, the Texas Legislature had no need to adjust the law.

434. Defendants do not dispute that Texas treated S.B. 14 as governing law after the decision denying preclearance was vacated by the Supreme Court and the statute that enjoined implementation of the Legislature's duly enacted law no longer applied.

435. Defendants do not dispute that Speaker Straus so testified. Plaintiffs ignore, however, that Texas disputes any finding that S.B. 14 has any racially discriminatory or retrogressive effect. *See supra*, ¶ 434. That Speaker Straus was unaware of a State-sponsored assessment of the impact of S.B. 14 has little significance given that S.B. 14 had been the subject of continued litigation since its enactment in 2011. Plaintiffs also ignore that the elections that followed implementation of S.B. 14 *confirmed* that

it would not negatively impact Texas voters, including minorities. *See* Defendants' Proposed Findings of Fact ¶¶ 45-51.

436. Defendants do not dispute that the State does not collect statewide data on provisional ballots, as elections are conducted by the counties. Defendants have no reason to dispute that Ingram was not aware of the number of provisional ballots cast across the State for lack of S.B. 14 ID at the time of trial. Nonetheless, an examination of provisional ballots conducted in this case shows that S.B. 14 did not negatively impact Texas voters, including minorities. *See id.*

437. This proposed finding is misleading. Whether or not then-Lieutenant Governor Dewhurst planned to examine the impact of S.B. 14 during the legislative interim, that opportunity never came about because S.B. 14 did not take effect until after Dewhurst left office. Lieutenant Governor Dewhurst had no reason to issue an interim charge to examine the impact of S.B. 14 before it was implemented.

438. Plaintiffs' proposed finding has no basis in fact or in the record. Plaintiffs have consistently alleged that S.B. 14 has caused or will cause "widespread disenfranchisement," as they do here, but no such widespread disenfranchisement has ever been found. Instead, Plaintiffs have consistently relied on a handful of individuals who, even though carefully selected after an intensive statewide search, are predominantly elderly voters who either have S.B. 14 ID, can obtain S.B. 14 ID, or can vote without it. Texas continues to dispute that S.B. 14 has any racially discriminatory or retrogressive effect. *See* Pet. for Writ of Cert., *Abbott v. Veasey*, No. 16-393 (U.S. Sept. 23, 2016). At the time it enacted S.B. 14, the Texas Legislature, relying on academic studies and the experiences of other states, concluded that it would *not* disparately affect minorities. *See* Defendants' Proposed Findings of Fact ¶¶ 207-216. Nonetheless, the Texas Legislature remained open to adjusting the law if future elections

demonstrated such a need. *See id.* ¶ 172. But the elections that followed implementation of S.B. 14 only *confirmed* that it would not negatively impact Texas voters, including minorities. *See id.* ¶¶ 45-51. Accordingly, the Texas Legislature has had no need to adjust the law.

Date: December 16, 2016

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant
Attorney General

BRANTLEY D. STARR
Deputy First Assistant
Attorney General

JAMES E. DAVIS
Deputy Attorney General
for Litigation

/s/ Angela V. Colmenero
ANGELA V. COLMENERO
Chief, General Litigation Division

MATTHEW H. FREDERICK
Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-6407
Fax: (512) 474-2697

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero
ANGELA V. COLMENERO

Exhibit 12

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty Protest of Voter ID Law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

Oct 25, 2016
Date

Sworn to and subscribed before me this

25 day of Oct, 2016

Presiding Judge Michael Handley

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:
  - _____certified birth certificate (must be an original)
  - _____current utility bill
  - _____bank statement
  - _____government check
  - _____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
  - _____paycheck

Location: Carpenter Park

Date of Election: 10-25-2016

RECEIVED OCT 28 2016

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name (*Nombre*): [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) (*Elija al menos una de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiars*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
	Other reasonable impediment or difficulty: Don't believe I have to show Picture ID *Otro impedimento o dificultad razonable* _____		

[redacted] **The reasonableness of your impediment or difficulty cannot be questioned.**
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted] 10/29/16
(Firma del elector/mujer elector) Date (*Fecha*)

[redacted]

Sworn to and subscribed before me this 29 day of Oct 20 16 Presiding Judge Lee Pan

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

✓	Valid Voter Registration certificate; or
	A copy or original of one of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
	paycheck

Location: SRD 134 M-1 Date of Election: 11/8/16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Print Name Legibly: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

___ Lack of transportation
___ Lack of birth certificate or other documents needed to obtain acceptable photo ID
___ Work schedule
___ Lost or stolen photo ID
___ Disability or illness
___ Family responsibilities
___ Photo ID applied for but not received
___ Other reasonable impediment or difficulty Don't agree with Voter Fraud

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] Date: 10/28/2016
Signature of Voter

Sworn to and subscribed before me this:
28th day of Oct, 2016

Presiding Judge or Alternate Judge:

RAUL SOLIS
Print Name

X [signature]
Signature

To be completed by Election Official:

The voter provided one of the following forms of identification or information:
☐ Valid Voter Registration Certificate; or
☐ A copy or original of one of the following was provided:
___ Certified Birth Certificate (must be an original)
___ Current utility bill
___ Bank statement
___ Government check
___ Other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
___ Paycheck

Early Voting Station: _____ Date of Election: ___/___/20___

RETURN INSIDE DAILY FOLDER

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Print Name Legibly: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

___ Lack of transportation
___ Lack of birth certificate or other documents needed to obtain acceptable photo ID
___ Work schedule
___ Lost or stolen photo ID
___ Disability or illness
___ Family responsibilities
___ Photo ID applied for but not received
X Other reasonable impediment or difficulty I do not agree with the law.

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] Date: ___/___/20___

Signature of Voter

Sworn to and subscribed before me this:

4th day of Nov, 20 16

Presiding Judge or Alternate Judge:

Raul Soliz-Aranda X [signature]

Print Name Signature

To be completed by Election Official:

The voter provided one of the following forms of identification or information:
☐ Valid Voter Registration Certificate; or
☐ A copy or original of one of the following was provided:
___ Certified Birth Certificate (must be an original)
___ Current utility bill
___ Bank statement
___ Government check
___ Other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
___ Paycheck

Early Voting Station: _____ Date of Election: ___/___/20___

RETURN INSIDE DAILY FOLDER

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty do not agree with law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

10/28/2016
Date

Sworn to and subscribed before me this

28 day of Oct, 2016

Presiding Judge Janet L Lueck

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☒ Valid Voter Registration certificate; or

☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 11/4/2016

Signature of Voter Date

Sworn to and subscribed before me this

4 day of Nov, 2016

Presiding Judge

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☐ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: _____

Date of Election: _____

11-04-16
26-Millennium
TEAM 2

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty: It's unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

11/4/16
Date

Sworn to and subscribed before me this
4th day of Nov, 20 16

Presiding Judge [signature]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☐ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:
  - _____certified birth certificate (must be an original)
  - _____current utility bill
  - _____bank statement
  - _____government check
  - _____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
  - _____paycheck

Location: 26-Millennium YC

Date of Election: 11-08-16

1140528682 CUNNINGHAM, DONNA
2618 CARLOW DR
AUSTIN 344A

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty Unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 11-4-16
Date

Sworn to and subscribed before me this

4 day of Nov, 20 16

Presiding Judge Linda P. Stewart

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Randalls Ben White

Date of Election: 11.4.2016

11.8.2016

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification:

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty Unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

10/26/2016
Date

Sworn to and subscribed before me this

26th day of Oct, 20 16

Presiding Judge Beverly Wunderlich

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty: Court declared photo ID requirement unconstitutional

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 28 October 2016

Signature of Voter — Date

Sworn to and subscribed before me this 28 day of Nov 20

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:
  - _____certified birth certificate (must be an original)
  - _____current utility bill
  - _____bank statement
  - _____government check
  - _____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
  - _____paycheck

Location: EV

Date of Election: NOV 8, 16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty SUPREME COURT Struck down photo ID LAW in TEXAS

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter

8 NOVEMBER 2016
Date

Sworn to and subscribed before me this

8 day of NOV. 2016

Presiding Judge [signature]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☒ Valid Voter Registration certificate; or

☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: 301, 315

Date of Election: 11·8·16

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name (*Nombre*): [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) (*Elija al menos una de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiars*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
✓	Other reasonable impediment or difficulty not required by law *Otro impedimento o dificultad razonable* _____		

The reasonableness of your impediment or difficulty cannot be questioned.
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted]
Signature of Voter (*Firma del elector*)

11/4/16
Date (*Fecha*)

Sworn to and subscribed before me this 4 day of Nov, 20 16 Presiding Judge Annie Rhodes

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

✓	Valid Voter Registration certificate; or
	A copy or original of one of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
	paycheck

Location: SRD001 0000008 Date of Election: 11-8-16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty not law

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted]
Signature of Voter [redacted]

10/3/16
Date

Sworn to and subscribed before me this

____ day of _____, 20

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☐ Valid Voter Registration certificate; or

☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: _____

Date of Election: _____

REASONABLE IMPEDIMENT DECLARATION

[redacted]D BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty AGAINST THE LAW

[redacted]e questioned.

X [redacted] 10/28/2016

Signature of voter Date

Sworn to and subscribed before me this

____ day of _____, 20

Presiding Judge _____

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☑ Valid Voter Registration certificate; or

☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: _____

Date of Election: _____

MK 10.26.16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☒ Other reasonable impediment or difficulty Lack of TRUST That This LAW IS VALID.

The reasonableness of your impediment or difficulty cannot be questioned.

[redacted] 10/26/16

Signature of Voter Date

Sworn to and subscribed before me this

26 day of 10 20

Presiding Judge Mary Diane Nelson

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☑ Valid Voter Registration certificate; or
- ☐ A copy or original of **one** of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Martin L. King

Date of Election: 10-26-16

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name *(Nombre)*: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilito de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check **at least one** box below) *(Elija al menos una de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiars*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitado pero no la he recibido*
✓	Other reasonable impediment or difficulty do not legally need to show Photo ID *Otro impedimento o dificultad razonable*		

The reasonableness of your impediment or difficulty cannot be questioned.
La razón de su impedimento o dificultad no puede ser cuestionado.

X [redacted]
Signature of Voter *(Firma del elector)*

10/29/2016
Date *(Fecha)*

Sworn to and subscribed before me this 29 day of Oct, 2016 Presiding Judge Lee Pan

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

✓	Valid Voter Registration certificate; or
	A copy or original of **one** of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)
	paycheck

Location: SRD 134 M-1

Date of Election: 11/8/16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty because I didn't bring it.

The reasonableness of your impediment or difficulty cannot be questioned.

X [redacted] 10/26/2016

Signature of Voter — Date

Sworn to and subscribed before me this

26 day of Oct, 2016

Presiding Judge [illegible]

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

- ☒ Valid Voter Registration certificate; or
- ☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: FB ISD Main

Date of Election: 26 Oct 16

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check at least one box below)

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☑ Other reasonable impediment or difficulty: Did Not Want to "pander" to government requirement

The reasonableness of your impediment or difficulty may be questioned.

[redacted] 10-24-16

Signature of Voter Date

Sworn to and subscribed before me this

24 day of Oct, 2016

Presiding Judge Dichie Ryle

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

☑ Valid Voter Registration certificate; or

☐ A copy or original of one of the following was provided:

_____certified birth certificate (must be an original)

_____current utility bill

_____bank statement

_____government check

_____other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original)

_____paycheck

Location: Mercedes Civic Center

Date of Election: Nov. 8, 2016

REASONABLE IMPEDIMENT DECLARATION
DECLARACIÓN DE IMPEDIMENTO RAZONABLE

TO BE COMPLETED BY VOTER
PARA SER LLENADO POR EL ELECTOR

Name (*Nombre*): [redacted]

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY
DECLARACIÓN DE IMPEDIMENTO RAZONABLE O DIFICULTAD DEL ELECTOR

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

Al firmar esta declaración, juro o afirmo bajo pena de perjurio que soy la misma persona que apareció personalmente en la casilla electoral, que estoy emitiendo mi boleta al votar personalmente, y que tengo un impedimento o dificultad razonable que me imposibilita de obtener una identificación con foto como es requerido.

My reasonable impediment or difficulty is due to the following reason(s):
Mi impedimento razonable se debe a las siguientes razones:

(Check at least one box below) (*Elija al menos una de las razones que aparecen a continuación*

	Lack of transportation *Falta de transporte*		Disability or illness *Discapacidad o enfermedad*
	Lack of birth certificate or other documents needed to obtain acceptable photo ID *Falta de acta de nacimiento u otros documentos necesarios para obtener una identificación con foto*		
	Work schedule *Horario de trabajo*		Family responsibilities *Responsabilidades familiars*
	Lost or stolen photo ID *Pérdida o robo de identificación con foto*		Photo ID applied for but not received *Identificación con foto ha sido solicitada pero no la he recibido*
✓	Other reasonable impediment or difficulty HAVE PROCRASTINATED *Otro impedimento o dificultad razonable*		

The reasonableness of your impediment or difficulty cannot be questioned.
La razón de su impedimento o dificultad no puede ser cuestionada.

X [redacted]
Signature of Voter (*Firma del elector*)

10-29-2016
Date (*Fecha*)

Sworn to and subscribed before me this 29 day of Oct 20 16 Presiding Judge Annie Rhodes

TO BE COMPLETED BY ELECTION OFFICIAL

The voter provided one of the following forms of identification or information:

	Valid Voter Registration certificate; or
	A copy or original of one of the following was provided:
	certified birth certificate (must be an original)
	current utility bill
	bank statement
	government check
✓	other government document that shows the voter's name and an address (with the exception of a government document containing a photograph which must be an original) [redacted] DL
	paycheck

Location: SRO 001

Date of Election: 11-8-16

0000066

Exhibit 13

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DECLARATION OF KEITH INGRAM

My name is Keith Ingram and I am over the age of 18 and fully competent to make this declaration, and state the following:

1. I am the Director of Elections for the Texas Secretary of State. The Secretary of State is the chief election officer of Texas. *See* TEX. ELEC. CODE § 31.001. As the Director of Elections, I supervise the Secretary of State's Election Division. The Election Division's primary responsibility is ensuring that the Secretary of State discharges all of his duties under the Texas Election Code.

2. Section 14.001 of the Texas Election Code requires the voter registrar to "issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense list" on or before November 15, 2017 but before December 6, 2017. TEX. ELEC. CODE § 14.001(a). The Secretary of State prescribes the form and language contained in the certificate, but the counties print and mail the certificate to registered voters. The Secretary of State is required to include the operative

voter-ID rules on each voter registration certificate to ensure that voters have clear notice of the requirements. *See* TEX. ELEC. CODE § 15.005. Although the court's August 23 order enjoins the requirements contained in Section 15.005 of the Texas Election Code, the Secretary of State must include other language on the back of the voter registration code pursuant to other statutory obligations. *See, e.g.,* TEX. ELEC. CODE §§ 15.001(a), 15.002(a). In order for the counties to complete the mass mailout of voter registration certificates, the Secretary of State must adhere to certain deadlines.

3. In my capacity as the Director of Elections, I am responsible for approving the language that appears on the back of the voter registration certificate. The agency's internal deadline to finalize the language on the back of the certificate was August 30. We set that internal deadline, because the cards have to be printer-ready to create a sample production on September 18. But between those two dates, the agency needs to translate the language contained on the certificate into Spanish, identify any changes that are needed, and do a final review. This process typically takes us about 18 days. However, if we work on an expedited basis as fast as possible, we could perform the translation and those final reviews and still have the certificates to the printer by September 18 if a court definitively clarified which voter-ID laws will be in place for the 2018 election cycle by September 14.

4. The Secretary of State intends to issue a directive to the counties on October 2 regarding the mass mailout of voter registration certificates. Beginning in

August and through the end of October, counties order certificate supplies from printers for use in the mass mailout. On November 1, the counties will begin printing the certificates. The certificates are mailed beginning on November 22. By December 6, the counties are statutorily required to have mailed all voter registration certificates. *See* TEX. ELEC. CODE § 14.001(a).

5. On or after the start of the 2018 fiscal year, which begins September 1, the Secretary of State intends to seek to procure vendor services to assist the State with voter education for the November 2017 election. Early voting for this election begins on October 23. As a result, in order to procure a vendor and allow the vendor sufficient time to create and implement an education campaign, the State needs to know which election procedures will be used for the upcoming election by September 14.

6. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 24th day of August, 2017.

KEITH INGRAM

Exhibit 14

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*,	§	
	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DECLARATION OF STAN STANART

My name is Stan Stanart and I am over the age of 18 and fully competent to make this declaration, and state the following:

1. I am the elected County Clerk for Harris County, Texas. As the County Clerk, I serve as the County Election Officer for Harris County and I am responsible for conducting county elections in Harris County, per Texas Election Code.

2. The August 23, 2017 permanent injunction against enforcement of significant portions of SB14 and SB5 causes significant problems for Harris County as the largest county in Texas. With a population greater than 26 states, Harris County has significant logistics issues, which require significant planning to conduct a countywide election.

3. All entities conducting a general election in November of 2017 were required to order their election by August 21, 2017. This is the official beginning of the election. However, for large counties, such as Harris County, the election began a lot sooner. Harris County has over 2.23 million registered voters who have access

to 46 early voting locations and close to 750 Election Day polling locations. These polls are supported by approximately 5,000 poll workers. The supplies for these polls were prepared in July and ordered in August in order to be received and packaged in early September for the November election.

4. The 5,000 poll workers need to be trained on the appropriate procedures for the election. The training materials have already been created for the November 2017 election. Approximately ten forms are related to photo identification, making up over 200,000 pages that will have to be reprinted. If the provisional affidavits need to be changed, it will take at least 2 months for printing for the special form used in Harris County. As required by federal law, all of the material provided to the public will have to be translated into three additional languages.

5. Training for early voting will begin in mid-September and be completed in early October. Training for Election Day will begin October 1st and go through the end of the month. Any new process needs to be available immediately in order to be prepared for any election in 2017. Currently, photo identification training is already occurring with information provided by the Secretary of State and Harris County online. All training videos will have to be re-produced.

6. There is the likelihood that the November election could have a runoff election in December. Supplies for this election have already been ordered in anticipation of the event. There will not be much additional training as there is not much time between the two elections. Consequently, poll workers will rely on the training that they have received for the November election.

7. It has been our experience that every time the voting identification law changes, it is necessary to have sufficient time to educate not only the poll workers, but the voting public. At least six months are necessary to educate the public on any major change. During the November 2016 election, after the court ordered use of the Declaration of Reasonable Impediment process, there was a lot of misinformation provided by media, political parties and elected officials, which created such confusion that voters thought that they were not required to bring their photo identification or they were not required to bring ANY form of identification. The confusion created longer lines, frustration and distrust of the election process in general.

8. During the May 2017 election, the voters and poll workers had over six months of education and the voter identification process requiring use of the Declaration of Reasonable Impediment process went much more smoothly than in November 2016.

9. The cost to Harris County to implement these changes is significant, especially considering that large quantities of forms, training, etc. that will need to be changed in short order.

10. Having to focus on the significant changes required by the August 23 court order, which prevents enforcement of significant law in SB14 and SB5, creates significant risk to our normal process of ensuring that elections go smoothly for the voters of Harris County.

11. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 24 day of August 2017.

STAN STANART
County Clerk, Harris County Texas